CONSTRUCTIONS

BY THE

COURTS OF SUDDER DEWANNY & NIZAMUT ADAWLUT

OF THE

REGULATIONS AND LAWS,

FOR

THE CIVIL GOVERNMENT

OF

The whole of the Territories under the Presidency

OF

FORT WILLIAM IN BENGAL.

VOL. II.

CALCUTTA:

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ADVERTISEMENT.

The Indexes which are appended to this volume are intended to apply to the contents of both volumes, so as to supersede the Index prefixed to the 1st volume. A reference to the Index of Regulations now given, will show whether there is any construction of any required enactment in the two volumes, and in which volume it is to be found. The second Index points out the constructions which have been given on points not specifically contained in any Regulation.

CONSTRUCTIONS

OF THE

REGULATIONS OF GOVERNMENT

BY THE COURTS OF

Sudder Dewanny and Nizamut Adawlut.

To the Officiating Commissioner of Circuit for the 3rd Division, dated 14th January, 1831.

No. 618.
1809.
Reg. VIII.
C. 2, Sec. 5.
C. 2, Sec. 7.

In reply to your letter of the 27th ultimo, I am directed by the Court of Nizamut Adawlut to inform you, that as the zillah and city magistrates are expressly empowered by the latter part of the second clause of Section 5, and by clause 2, Section 7, Regulation VIII. of 1809, to make temporary appointments of persons duly qualified to perform the duty of the principal ministerial native officers of their courts, as well as of record keepers and the whole of the native officers of their establishments receiving a salary of 10 rupees and upwards, the Court are of opinion that the persons so appointed to officiate can legally act as officers of the Court, immediately on their nominations, (before their appointments have been reported to the commissioner of circuit;) but that the magistrates are bound immediately to report the same for the commissioner's information.

To the Commissioner of Circuit for the 15th Division, dated 21st January, 1831.

No. 619.
1796.
Reg. XI. Sec. 4.
1804.
Reg. III Sec. 4.
1817.
Reg. XX. Sec. 26.
1825.
Reg. XII.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 10th instant forwarding an original letter from the magistrate of Dacca Jelalpoor, and requesting the Court's opinion whether a magistrate can punish the evasion of his process of arrest as a contempt of court.

2. In reply, I am directed to state that, as the course of procedure against persons evading the process of a criminal court is distinctly laid down in Section 4, Regulation XI. 1796, and Section 26, Regulation XX. 1817, the magistrate's views of expediency cannot justify his deviating from that course, and to request that you will instruct him to conform to it in future. The Court desire me to add, that the provisions of Regulation XII. of 1825, are applicable solely to contempts committed in open court.

1828.
Reg. VIII.

3. With reference to the remark of the magistrate in the 4th paragraph of his letter that he invariably makes that person responsible for the affray who profited by it, whether, present or absent, and the establishment of that fact, his guide in apportioning the punishment; I am directed to observe, for his information and future guidance, that the punishment would be illegal, unless there were proofs that the person so punished had been guilty of instigating or conniving at the affray.

January 21*st*, 1831.

From the Commissioner of Circuit for the 8*th or Benares Division, dated* 13*th January*, 1831.

No. 620.
1807.
Reg. IX. Sec. 3.

I am led to trouble the Court with this address for reasons which the accompanying copy of a letter from the magistrate of Juanpoor will explain.

2. A thanadar having reported a dispute about land, the magistrate directed the thanadar to take mochulkas from the parties not to commit a breach of the peace, and in consequence of one party demurring to execute a mochulka at the thana, he was fined. Having preferred an appeal, I reversed the order, as I did not consider that the magistrate had the power to require any person to enter into a penal recognizance before the thanadar, without at least hearing what he had to say. Moreover, I considered that such an order gave the thanadars a power which was very liable to be abused.

3. I do not call into question the power of a magistrate to require a person to execute such a mochulka (when it may appear necessary) in his presence, after he has been heard in his defence.

From the Magistrate of Zillah Juanpoor to the Commissioner of Circuit for the Division of Benares, dated 10*th July*, 1831.

I have the honor to acknowledge the receipt from you of a Persian robukary dated the 1st December 1830, in the case of Udhur Singh petitioner, and with reference thereto to solicit the favor of your obtaining for me the opinion of the Court of Sudder Nizamut Adawlut regarding the power of a magistrate, on its appearing from the report of a police darogha or otherwise, that disputes exists concerning lands, &c., likely to terminate in a breach of the peace, to direct mochulkas for keeping the peace to be taken from either party. Such mochulkas, I have reason to believe, are commonly ordered to be taken by magistrates on similar occasions, and they are of course not intended to interfere with any summary suit which may be preferred by the parties for dispossession.

To the Commissioner of Circuit for the 8*th Division, dated the* 21*st January*, 1831.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter and its enclosures, under date the 13th instant, submitting a reference from the magistrate of Juanpoor, relating to the power of a magistrate to direct a darogha to take moochulkas to keep the peace in certain cases, and to inform you that the Court consider

the orders passed by you in the case alluded to, to have been quite proper and conformable to the regulations.

January 21, 1831.

From the Judge of Zillah Etawah, dated 10*th January*, 1831.

No. 621.
1814
Reg. XXVIII.
Sec. 11.

I request you will solicit from the Court of Sudder Dewanny Adawlut an answer to the following question:

In the event of a suit instituted by a pauper being dismissed with costs, and the proceeds arising from the sale of his property not being sufficient to pay the fees due to his vakeel with costs and fees awarded in favor of the opposite party, and the law expences due to Government, in what order should the several claims be satisfied ?

To the Judge of Zillah Etawah, in reply, dated 21*st January*, 1831.

In reply to your letter of the 10th instant, requesting the instructions of the Court of Sudder Dewanny Adawlut relative to the order in which the several claims against a pauper plaintiff, whose suit has been dismissed, should be satisfied, I am directed by the Court to inform you that, after payment of the vakeel's fees, you should exercise your discretion in satisfying any other claims in such manner as may appear to you equitable, leaving any persons deeming themselves aggrieved by your order to their ordinary course of appeal.

January 21, 1831.

To the Commissioner of the 15*th Division, dated the* 28*th January*, 1831.

No. 622.

In reply to your letter of the 18th instant, I am directed by the Court of Nizamut Adawlut to inform you that a magistrate is not at liberty to punish any of the offenders in a case originally cognizable by him, if circumstances of aggravation render it necessary for him to commit one or more of the persons implicated in the same offence for trial before the Commissioner of Circuit.

January 18, 1831.

Extract of a letter addressed to the Commissioner of Circuit for the 3*rd Division, in reply to his letter of the* 15*th January* 1831, *dated the* 4*th February*, 1831.

No. 623.
1828.
Reg. VIII.

2. In reply, I am directed to request you will inform the acting magistrate that in all cases of affray attended with wounding, if the wounds have been inflicted with a sword, the case should be committed for trial before the commissioner of circuit, and that in all cases of affray attending with wounding or beating punished by himself, he should insert in the column of explanations and remarks of his monthly statements a brief statement of the

case and a description of the personal injury sustained by the wounded or beaten persons, in order that the Court may be enabled to judge of the propriety or otherwise of the sentence.

February 4, 1831.

To the Commissioner of Circuit for the 17th Division, dated 25th February, 1831.

No. 624.
1826.
Reg. III.

In reply to your letter of the 19th ultimo, I am directed by the Court of Nizamut Adawlut to communicate to you their opinion, that a civil prisoner cannot be confined in fetters, unless he be suffering under a criminal sentence for having broken jail; in other words, fetters cannot be imposed on a civil prisoner merely to ensure his safe detention in jail. I am also directed to refer you to Sections 4 and 5 of Regulation III. of 1826, and to observe that the second clause of the latter Section points out a specific mode of punishment for any offence committed by a prisoner confined under civil process, which may not exceed the general powers of a magistrate.

February 25, 1831.

To the Commissioner of Circuit for the 17th Division, dated 25th February, 1831.

No. 625.
1796.
Reg. XI. Sec. 2, C. 2.
1804.
Reg. III. Sec. 2, C. 2.
1807.
Reg. IX. Sec. 23.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 24th ultimo, requesting the opinion of the Court whether the appeal from an order of the magistrate of Sylhet for attaching lands in his district, on the requisition of the magistrate of Dacca Jelalpore, should be preferred to you or to the commissioner of circuit of the Dacca division; and to inform you, in reply, that as the attachment was the immediate act of the magistrate of Sylhet, the appeal is cognizable by you.

February 25, 1831.

To the Commissioner of Circuit for the 15th Division, dated 25th February, 1831.

No. 626.
1829.
Reg. X. Sec. 10.
C. 1, 7 & 11.

In reply to your letter of the 17th ultimo, requesting to be furnished with the orders of the Court of Nizamut Adawlut respecting the completion of the trials referred to in paragraphs 4 to 8 of your letter of the 30th July, which you were requested by the 3rd paragraph of mine of the 3rd August, to postpone till further orders, I am directed by the Court to transmit to you for your information and guidance the accompanying copies of a letter from the Secretary to Government in the Judicial Department dated 7th September last, enclosing an extract from the proceedings of Government in the General Department, containing the Government's construction of the provisions of Regulation X. of 1829, which relate to embezzlement by stamp venders, and of a letter addressed by order of the Court to the Secretary in reply.

From the Secretary to Government, Judicial Department, to the Acting Register of the Sudder Dewanny Adawlut, dated 7th September, 1830.

I am directed by the Right Honorable the Governor General in Council to desire you will lay before the Court of Sudder Dewanny Adawlut the accompanying copy of an extract from the proceedings of Government in the General Department under date the 24th ultimo, for the purpose therein stated.

Extract from the Proceedings of Government in the General Department, under date the 24th August, 1830.

Read an extract from the proceedings of Government in the Judicial Department, dated 17th August, 1830.

The Governor General in Council on referring to the rules of Regulation X. 1829 cited by the Nizamut Adawlut, apprehends that there has been some misconception as to the intent and object of the provisions contained therein. There is no rule or enactment in Regulation X. 1829, prescribing any penalty for secretly making away with stamps from the store or for an embezzlement of any kind. The law in respect to these acts remains as heretofore: for the offences being punishable by the ordinary courts and process of law, it did not appear necessary to insert any new provisions on the subject in the consolidated regulation.

The penalty referred to in clause eleven, Section X. Regulation X. 1829, was designed to enable the collector or other superintending officer to compel a rendering of account and delivery of the balance of store and cash upon an occasion of removal or resignation, so as to prevent a party so removed or resigning from defying the collector and avoiding the rendering any account until compelled by a regular suit. As the law now stands the vender, removed or resigning, must render account under liability to the penalty of the Section quoted; but if upon being rendered and the balance delivered according to it, the account be discovered to be false, covering embezzlement or taking credit for remittances never made, the punishment for such acts must be by prosecution for the frauds as criminal offences, under the general regulations, not by the rule of the clause cited, which would not apply.

Ordered, that a copy of the above observations be communicated through the Judicial Department to the Sudder Dewanny Adawlut, with a request that the opinion of the Court may be taken on the construction of the law with reference thereto.

From the Acting Register of the Nizamut Adawlut, to the Secretary to Government in the Judicial Department, dated the 24th September, 1830.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 7th instant, forwarding an extract from the proceedings of Government in the General Department, under date 24th ultimo, requesting that the opinion of the Court might be taken as to the construction of clause 7, Section 10, Regulation X. 1829,

relating to the embezzlement of stamps by the venders, with reference to the above resolutions.

2. In reply, I am directed to state that, in the opinion of the majority of the Court, if a true account of the receipts and of the proceeds of the sale of paper entrusted to him be rendered by a vender of stamps, only the penalty prescribed in the eleventh clause of Section X. Regulation X. 1829, is exigible for the non-delivery of paper or money due according to the account; but that if the account rendered be false, the vender is liable, under the general regulations, to a prosecution in the criminal court for fraud and embezzlement.

February 25, 1831.

No. 627.

1807.
Reg. II. Sec. 4, Cl. 4.
1821.
Reg. III. Sec. 3.

Extract from a letter from Commissioner of 13*th Division, dated* 29*th January,* 1831.

I beg the favour of the Court to decide whether a deposition taken on oath in the private dwelling of a sudder aumeen, distant nearly three miles from the court-house, is legal evidence; and if so, whether a witness can be punished for perjury, in the event of it afterwards appearing that what he stated on oath in the dwelling house of the sudder aumeen was false. I make the reference in consequence of a case of the kind having been committed for trial before me at the present sessions by the magistrate of Rungpore.

2. I take this opportunity of requesting to know whether the Court do not consider making over petitions, when first presented, to the sudder aumeens, for report, an objectionable proceeding. I have always been of opinion that a magistrate should hear and decide on every petition himself, and pass an order on it in the presence of the petitioner. Sending the petition to a sudder aumeen for report, appears to me likely to lead to much abuse, and to be attended with no advantage except lessening the magistrate's trouble, which, when the importance of the duty is considered, should not be thought an object. If the Court agree with me, I propose desiring the magistrate to discontinue the practice, and perform the duty himself. I always found time to do it, by devoting the whole of Saturday to receiving and hearing petitions.

Extract of a letter addressed to the Commissioner of 13*th Division, dated* 28*th February,* 1831.

2. In reply to your first question, I am directed to observe that a deposition taken in the manner above stated is illegal, and cannot be received; consequently the deponent cannot be considered liable to the penalties of perjury if such deposition be false.

3. In reply to your second question, I am directed to refer you to the Court's circular letter dated the 24th July, 1829, prohibiting the practice you advert to, and to desire that in the event of the magistrate's having acted in opposition to those orders, you will call upon him for explanation.

February 28, 1831.

Extract paragraph 2, *from a letter addressed on the* 4*th March*, 1831, *to the Commissioner of Circuit for the* 19*th Division, in reply to his letter of the* 22*d February*, 1831.

Par. 2. The Court observe that the wounding in the affray of which Suroop Sing, No. 3 of the statement of prisoners punished by the magistrate of Midnapore, having been inflicted with a sword, it was not competent to the magistrate to pass final sentence; and accordingly request that you will call for the proceedings in the case and pass such orders thereon as may appear proper. No. 628. 1828. Reg. VIII.

March 4, 1831.

Extract of a letter from the Commissioner of the 15*th Division, dated the* 24*th February*, 1831.

Par. 2. I take this opportinty to ask if a commissioner of circuit be competent to modify a sentence passed by himself under particular circumstances; or whether the case should invariably be reported for the consideration and orders of the Nizamut Adawlut. No. 629.

Extract of the Court's reply, dated the 4*th March*, 1831.

Par. 2. With reference to the 2nd paragraph of your letter I am directed to observe, that having no authority to alter a sentence once passed, you should refer all similar cases for the orders of this Court.

March 4, 1831.

Extract of a letter to the Moorshedabad Provincial Court of Appeal, dated the 11*th March*, 1831.

Par. 3. With reference to the questions contained in the 2nd and 3rd paragraphs of the judge's letter, I am directed to observe that it is not required by the regulations that a copy of the deed of mortgage should be served on the mortgagee, but only a copy of the application of the mortgagee to the judge of the civil court for the issue of the prescribed notice. No. 630. 1806. Reg. XVII. Sec. 8.

March 11, 1831.

Extract of a letter to the Commissioner of Circuit of the 13*th Division, dated the* 25*th March*, 1831.

Par. 3. I am further directed to observe that the issuing of a perwaneh by the magistrate to the government pleader directing him to communicate with the law officer, over whom, in his capacity of law officer of a court of circuit, he had no control, on a matter relating to a futwa delivered in a trial before the court of circuit, was highly improper and unjustifiable; and you are requested to instruct the magistrate that the Court trust that they will not have occasion to notice such objectionable interference on his part in future. No. 631.

March 25, 1831.

To the Joint Magistrate of Bugoora, dated 8th April, 1831.

No. 632.
53 Geo. III. Cap. 155, Sec. 105.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 22nd ultimo, reporting a case in which an indigo planter confined in stocks four individuals, one of whom died in confinement, for the periods of 30, 34 and 60 days, in his factory, and requesting the Court's opinion as to whether you are empowered to sentence the planter to a punishment of two months in each case, or must commit the case for the investigation of the grand jury.

2. In reply, I am directed to observe that magistrates are empowered by Section 105 of 53d Geo. III. Cap. 155, to punish European British subjects when convicted of assault, forcible entry, or other injury accompanied by force not amounting to felony.

3. In reply to your question as to your competency to award a separate punishment for each offence, the Court can only observe that if the offences are charged separately, there seems no reason why the sentences on conviction should not be likewise separate. I am desired however to point your attention to the statute law above referred to, which authorizes confinement only in default of payment of fine.

4. Should you, after a full investigation of the case, be of opinion that the offender ought to be brought to trial before the Supreme Court, you will of course proceed in the usual way, reporting the case for the information and orders of Government.

April 8, 1831.

To the Acting Magistrate of Allahabad, dated 29th April, 1831.

No. 633.
1824.
Reg. XV.

In reply to your letter of the 4th instant, requesting the opinion of the Court of Nizamut Adawlut on certain points connected with the Court's construction of Regulation XV. 1824, I am directed to inform you that you are not authorized to take cognizance, under that regulation, of a dispute between a zumeendar and his moostager or farmer; and that a "jaidadee tumusook" in possession of a moostager does not render the case of a quarrel between him and his zumeendar cognizable under the said regulation.

2. With reference to your question, whether a quarrel between a lumberdar and shikumee sharer is cognizable in the Foujdaree Court under the above regulation, I am directed to state, that if the dispute regarded a defined portion of land, the exclusive possession of which was claimed in proprietory right by each party, it would be cognizable under the said regulation; but not so, if the dispute was merely about the extent of the interest in the joint estate which each party claimed.

April 29, 1831.

Extract from a letter addressed to the Commissioner of Circuit for the 15th Division, on the 6th May, 1831, *in reply to his letter of 25th April,* 1831.

No. 634.
1817.
Reg. XVII. Sec. 5.

Par. 6. With reference to your remark on this case, that 'there remained but one 'witness for the prosecution, which, as a matter of course, fell to the ground,' the Court

direct me to observe that if you believed the testimony of that witness it would have been sufficient to have warranted your convicting the prisoners, referring the trial for the orders of the Court had the futwa acquitted the prisoners on the ground of one witness being insufficient for a conviction under the Mahomedan law.

May 6, 1831.

To the Judge of Dinagepore, dated 20th May, 1831.

No. 635.
1829.
Reg. X.
Sch. A. Art. 31.

In reply to your letter of the 12th instant, I am directed by the Court of Sudder Dewanny Adawlut to inform you, that all leases and counterparts *(pottahs* and *kuboolyuts)* granted to, or taken from the actual cultivators of the soil, should, under the exemptions noticed in Article 31 of Schedule A., Regulation X. of 1829, be written on unstampt paper, whether Government be or be not a party in the transaction.

May 20, 1831.

To the Judge of Backergunge, dated 20th May, 1831.

No. 636.
Writ of assistance.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 22d July last, requesting, with reference to mine of the 7th May, 1830, further instructions regarding the execution of the decree of the Supreme Court in the suit of Radha Madhub Banerjee versus Balmokund Thakoor.

2. In reply, I am directed to forward to you the accompanying copies of a letter from the Deputy Secretary to Government in the Judicial Department dated 19th ultimo, and of its enclosures, from which and the concluding paragraph of the Advocate General's letter of the 21st July, 1828, you will observe the course you are bound to pursue in giving effect to the writ of assistance of the Supreme Court and which you are directed to adopt accordingly.

3. With reference to the 9th paragraph of the Advocate General's letter of the 3d February last, I am directed to add that the investigation to be made into any claims of the nature therein mentioned by individuals, not parties to the suit before the Supreme Court, may be received and conducted in a summary form, as authorized by the general regulations in force in executing decrees of the established Mofussil courts.*

May 20, 1831.

To the Magistrate of Mymensingh, dated 27th May, 1831.

No. 637.
1800.
Reg. I.
1805.
Reg. VIII. Sec. 29, C. 8 to 14.

In reply to your letter of the 2d March last, requesting the Court's opinion 'whether 'the clandestinely marrying a ward, (also a minor,) placed under a guardian appointed by 'the Court of Sudder Dewanny Adawlut under Regulation I. 1800, without the consent 'of such guardian, and guardians authorized to contract marriages among Mahomedans

* The opinions of the Advocate General alluded to in this letter are printed in C. O. 20th May 1831. No. 31, Vol. 2. of S. D. A. Circulars.

'called "wullee oo-nikah," and contrary to the express orders of the civil court, would 'be an offence cognizable under the general regulations by the criminal courts,' I am directed by the Court of Nizamut Adawlut to transmit to you the accompanying copy of a futwa of two of the law officers of the Court, delivered by them, after a perusal of the copy of the roobukaree held by you in the civil court on the 19th February last, in the matter of Syud Gohur Ali, petitioner, versus Moolvee Abdool Ali (which accompanied your letter under acknowledgment), and a petition and certain papers filed by the said Moolvee Abdool Ali; and to inform you that as no offence appears to have been committed under the Mahomedan law, the Court do not consider the case cognizable in the criminal court.

Translation of a Futwa of two of the Law Officers of the Court, in the case of Syed Gohur Ali, petitioner, versus Moolvee Abdool Ali.

It appears from the proceeding of the judge of zillah Mymensingh dated 19th February, 1831, that while the marriage ceremony of Mosst. Noor-oon-nissa Khatoon, daughter of Mosummat Chand Bebee deceased, with Moolvee Tumeezodeen was suspended in consequence of a difference of opinion between the judges of the Court of Appeal and zillah judge; an order having been issued by the judge forbidding the marriage of the said Noor-oon-nissa with any person whatever until an order should be issued to that effect; Moluvee Abdool Ulee, son of Moluvee Burkutoolah Khan, without giving information to the said gentleman or obtaining his permission, and without any intimation to Gholam Abool Lys Chowdree, the half brother of the said Noor-oon-nissa who is also her guardian, married her. It is also understood from a petition of the said Noor-oon-nissa that she has arrived at the age of puberty and that she with her own free will and consent married Moluvee Abdool Ulee aforesaid. Under these circumstances, and as the said Noor-oon-nissa acknowledges that she has attained to the age of puberty and that this marriage has taken place agreeably to her own free will and consent, and as the judge's order was passed under the supposition of her being a minor, her marriage with Abdool Ulee, although it may have taken place without information given to the judge and guardian, or obtaining their permission, is valid and binding according to law, and Abdool Ulee aforesaid cannot in consequence of this marriage and such disobedience of orders be considered criminal or liable to punishment.

May 27, 1831.

Extract from a letter addressed to Government on 27th May, 1831, *on the Commissioner of 9th Division's Circuit Report for the 2d Sessions of* 1830.

No. 638.
1807.
Reg. II. Sec. 3, Cl. 1.

Par. 12. On the subject of the commissioner's remarks on the crime of perjury I am directed to submit the following observations.

13. The Court consider the commissioner's representation of the prevalence of wilful perjury a good deal exaggerated, and they cannot concur with him in thinking that the alleged frequency of the crime is in any degree owing to the defective state of the

law. They are of opinion that the law is in no wise in fault, and they are persuaded that if witnesses were examined in the courts of the magistrates, as they should be, by the magistrates themselves, and closely questioned as to every apparent inconsistency in their deposition, care being taken at the same time to make them understand the questions asked, and to write down the answers given by them so as to convey exactly their intended meaning, the crime would not be so often committed with impunity as the commissioner says it is.

14. The Mahomedan law as stated by the commissioner is not the law by which the criminal courts are guided in trials for perjury, and he should have informed himself better on the subject, ere he imputed the frequency of acquittals to the deficiency of the law. To warrant a sentence of punishment, the Bengal code only requires that the proof adduced, (it being provided by Clause 1, Section 3, Regulation II. 1807, that the crime of perjury may be proved either by the free and voluntary confession of the accused, or by the testimony of credible witnesses, or by strong circumstantial evidence,) shall be sufficient to satisfy the judge that the crime, defined to be perjury, has really been wilfully committed by the accused prisoner.

15. The observations of the commissioner that the judge before whom the evidence of witnesses to a charge of perjury is taken is more capable of forming a just estimate of the value of their testimony than a judge who only reads the written depositions; and that the delay which the reference of trials for perjury to this Court occasions takes away from the effect of the punishment; apply equally, if at all, to all trials as well as to trials for perjury.

16. The Court cannot think the reasons given by the commissioner for not having committed the witnesses noticed in the 58th paragraph of his report to stand their trial for perjury sufficient. If he thought there was proof sufficient to warrant a strong presumption of their having wilfully committed the crime, it was incumbent on him to commit them for trial; and the Court cannot but consider his failure to do so, with reference to the reason stated, a perverse dereliction of duty.*

May 27, 1831.

To the Acting Magistrate of Allahabad, dated 10*th June*, 1831.

No. 639.
Cir. Or. 10 Dec. 1830.

I am directed by the Court of Nizamut Adawlut to acknowledge receipt of your letter of the 15th April last, submitting the document relating to the establishment of a new bazar in Mouza Pata.

2. The Court are of opinion that in the event of any new dispute regarding the right to establish *haats* arising, you should be guided by the circular order of the 10th December last, but that in the case noticed by you the order of the Benares court of circuit, dated 8th March, 1823, from which no appeal has been preferred, must be upheld, until set aside by a decision in a regular civil suit.

June 10, 1831.

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* See another letter on this subject, date 2nd September, 1831, No. 656.

To the Officiating Commissioner of Circuit for the 2nd Division, dated 10th June, 1831.

No. 640.
1824.
Reg. XV.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 26th ultimo, submitting the explanation of the acting magistrate of Agra of his reasons for referring for report to the sudder ameens cases instituted under Regulation XV. 1824; and to state in reply, for the information of the acting magistrate, that the Court are clearly of opinion that he is not competent, under the regulation, to refer such cases to the sudder ameens, and accordingly direct that he discontinue the practice.

June 10, 1831.

From the Judge of Patna Provincial Court of Appeal to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated the 27th May, 1831.

No. 641.
1814.
Reg. XXVI. Sec. 2, Cl. 6.

We beg leave to submit the enclosed papers as specified in the list of them for the consideration of the Sudder Dewanny Adawlut.

2. Mr. Bird, the former judge, rejected a petition for a special appeal from Mutra Opudia and others, who, in consequence, presented a petition to this Court. It appeared that the judge had not held any proceedings on the occasion, and had merely written an order for the rejection of the special appeal on the corner of the petition; without even stating whether or not the petitioners or their vakeel were present. The Court therefore annulled the judge's order and directed him to hear the petition of special appeal again, to hold regular proceedings, and to pass an order for its admission or rejection.

3. Mr. Bird having been removed, the present judge re-heard the petition of special appeal, and rejected it on the ground that this court was incompetent to annul the order of the former judge, which was final.

4. There can be no doubt that had the former judge rejected the petition of special appeal in a regular manner his order would have been final, under Clause 6, Section 2, Regulation XXVI. of 1814; but the mode in which it was passed, being essentially irregular, brought the cause within the meaning of Clause 3 of the above section and regulation.

5. The order passed by the present judge appears to be irregular; for, if he doubted the competency of this Court, he ought to have suspended his proceedings, and made a reference to this Court, as directed by Section 2, Regulation XXII. 1803. (Sec. 2, Reg. X. 1796.)

6. The present judge observes that it was the custom of the Goruckpoor court to write orders on petitions of special appeals, instead of holding proceedings; and we must add that this custom extends to almost every other miscellaneous matter, which makes the passing of an order on a miscellaneous case extremely difficut and tedious.

To the Judges of Patna Provincial Court of Appeal, dated 10th June, 1831.

In reply to your letter of the 27th ultimo requesting to be informed whether, under the circumstances stated, you were competent to direct the judge of Gorruckpoor to rehear a petition for a special appeal, which had in your opinion been irregularly dismissed;

I am directed to inform you that the Court of Sudder Dewanny Adawlut are clearly of opinion that as the original order dismissing the petition was irregular, in as much as it was contrary to regular and established practice of the courts, you were competent to direct the judge to rehear it; and they desire that the judge be instructed accordingly.

June 10, 1831.

To the Commissioner of Circuit for the 17*th Division, dated* 10*th June,* 1831.

No. 642.
1807.
Reg. IX.
Secs. 4, 5 and 6.

In reply to your letter of the 23d April last, I am directed by the Court of Nizamut Adawlut to inform you that appellants from the decisions of magistrates are at liberty to employ whom they please to conduct their appeals. The Court are however of opinion, that the agents so employed should secure their remuneration before undertaking the business, and should be given to understand that, if they neglect to do so, no assistance to enforce payment of it afterwards will be given.

June 10, 1831.

From the Commissioner of 15*th Division, dated the* 11*th June,* 1831.

No. 643.
1803.
Reg. LIII. Sec. 8, Cl. 5.

I beg you will submit for the consideration of the Court of Nizamut Adawlut the accompanying original letter to my address from the magistrate of zillah Dacca Jelalpore dated the 4th instant.

2. The case of the prisoner referred to will be found in the statement of prisoners punished without reference at the 2nd sessions of 1830, No. 1.

3. The circumstance of the prisoner's dwelling house being so close to the town of Furreedpore did escape me when passing sentence; and, though concurring in the propriety of the measure suggested by the magistrate, I conceive I have not now the authority to alter the sentence already passed. The superior Court has this power, and I accordingly beg to recommend that the period of imprisonment awarded to the prisoner be carried into effect in banishment.

To the Commissioner of 15*th Division, dated* 17*th June,* 1831.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 11th instant and its enclosure, suggesting that the sentence of 14 years imprisonment passed by you at the last sessions of jail delivery for zillah Dacca Jelalpore on Beesye, convicted of burglary and theft, be carried into effect in banishment to another district; and in reply to inform you, that the Court, on consideration of the circumstances stated, have been pleased, under the power vested in them by the fifth Clause of Section 8, Regulation LIII. 1803, to direct that the prisoner Beesye be removed to the jail of the city of Dacca, and there confined till the expiration of his sentence.

June 17, 1831.

Extracts from a letter to the Moorshedabad Provincial Court of Appeal, dated 24th June, 1831.

No. 644.
1806.
Reg. XVII. Sec. 8.

Par. 2. In reply, I am diricted to state that the Court deem it sufficient to observe that the provisions of Section 8, Regulation XVII. 1806, expressly require that a copy of the application of the mortgagee to foreclose should accompany the perwaneh issued to the mortgager; and that, in their opinion, the mortgagee, on filing his application should be directed immediately to deposit the tulubana of the peon through whom the perwaneh is issued to the other party, that the order for issuing the same be passed without delay.

June 24, 1831.

To the Commissioner of Circuit for the 7th Division, dated 1st July, 1831.

No. 645.
C. O. 3 June, 1829.

In reply to your letter of the 18th ultimo, requesting to be informed whether magistrates can, under certain circumstances, be permitted to transact the current business of their offices in their private dwellings, the Court deem it sufficient to observe that, when sitting as a criminal judge, a magistrate must sit in the established court-house; but that the Court deem it unnecessary to enter into the general question of the powers of a magistrate out of office.

July 1, 1831.

To the Calcutta Provincial Court of Appeal, dated 8th July, 1831.

No. 646.
1808.
Reg. XIII. Sec. 11, Clause 3.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 2nd instant and its enclosures; and in reply to inform you, that the Court are of opinion that the construction of Clause 3, Section 11 of Regulation XIII. 1808, suggested by the judge of Burdwan, is correct, and that it rests with the zillah judge, to whom the appeal from a sudder ameen's decision is preferred, to order or stay the execution of the decision appealed from; and not with the register,* to whom the appeal is referred by the judge for trial.

July 8, 1831.

To the Judge of Purnea, dated 15th July, 1831.

No. 647.
1830.
Reg. VI.

In reply to your letter of the 1st instant, I am directed by the Court to inform you that the provisions of Regulation VI. 1830, regarding the deposit of the subsistence money of persons confined in the civil jails, apply to the officers of Government as well as to private individuals.

July 15, 1831.

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* Though the office of Register has been abolished, this rule is still applicable to the Principal Sudder Ameens.

To the Judge of Purnea, dated 22d July, 1831.

No. 648.
1825.
Reg. VII. Sec. 4, Cl. 4 and 5.

The Court of Sudder Dewanny Adawlut having again had before them your letter of the 3d May last, together with that of the 7th ultimo and its enclosures, direct me to communicate to you the following remarks :

2. The Court are of opinion with you, that the circumstance of an estate being recorded in the collector's records in the name of another person than him against whom the execution of the decree was sued, is not sufficient to warrant the collector to decline to bring to sale, unless a claim were preferred or objection offered, in which case the collector should proceed in the manner laid down in Clauses 4 and 5, Section 4, Regulation VII. 1825.

3. The reason assigned by the commissioner for not ordering the sale of Talooka Rampoor Kooshalee ; viz. that the office of the collector of Purnea affords no accurate information, is in the opinion of the Court invalid, as it is incumbent on the collector to procure the information. The Court hold the same opinion regarding the reason assigned for not ordering the sale of the talookahs of Boochgowh and Deogowh, (viz. that no division can be made of these talookahs,) for the collector was bound to make the requisite division, or satisfy the Court that it cannot be done.

July 22, 1831.

To the Commissioner of Circuit for the 18th Division, dated 22d July, 1831.

No. 649.
1817.
Reg. XVIII. Sec. 6.
1827.
Reg. III. Sec. 4.

In reply to your letter of the 14th instant, I am directed to acquaint you that the Court have held that under the provisions of Section 6, Regulation XVIII. 1817, and Section 4, Regulation III. 1827, a magistrate is competent to entertain and investigate a charge of corruption preferred against an officer on the establishment of the commissioner of revenue and circuit.

July 22, 1831.

To the Officiating Commissioner of Circuit for the 5th Division, dated 22d July, 1831.

No. 650.
1798.
Reg. IX. Sec. 47.
1803.
Reg. VII. Sec. 15, Cl. 1.

In reply to your letter of the 5th instant, requesting to be informed whether, in the event of a prisoner's pleading " guilty," the trial should proceed in the same manner as if he had pleaded " not guilty ;" I am directed to inform you that the Court consider it advisable, in such a case, that you should proceed in the trial in the ordinary course.

July 22, 1831.

To the Judge of City of Dacca, dated 5th August, 1831.

No. 651.
1799.
Reg. V. Sec. 4.
1803.
Reg. III. Sec. 16, Cl. 4.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you dated 12th ultimo, accompanied by certain original Persian proceedings relating to the case of Usmutoonissa versus Gour Gopal, guardian of Moomtazoodeen minor.

1800. Reg. I. 1805. Reg. VII. Sec. 29, Cl. 8 to 14.

2. The state of the case, as detailed in your letter, appears to be as follows. Bafutoonissa, widow of Muneeroodeen, held the estate. Having no children, she adopted Moomtazoodeen, a minor, in 1225 or 1226 B. S., making over to him her property, real and personal, by deed of gift, and continued in possession as manager for her adopted son through the instrumentality of Hamud Meean her gomashteh, until her death in 1225 B. S.; after which the gomashteh continued, as heretofore, to manage the estate until his death in 1236 B. S., when Nuzzuroodeen, brother of Bafutoonissa, (to whose daughter, Usmutoonissa, Bafutoonissa had married her adopted son Moomtazoodeen,) took possession, in right of his daughter under a deed of settlement alleged to have been executed at the time of the marriage by Moomtazoodeen with the consent of Bafutoonissa. Moomtazoodeen being a minor, a guardian, Gour Gopal, was appointed at the instance of Aklakoollah, brother of the minor. This guardian now claims possession of the estate for his ward, under the deed of gift of Bafutoonissa. Under these circumstances, the Court, presuming Nuzzuroodeen to have taken possession of the estate on the death of the gomashteh, are of opinion that under Section 4, Regulation V. 1799, his possession cannot be disturbed unless, on the institution of a regular suit by the opposite party, he be unable or neglect to give the security which in that case might be required from him.

August 5, 1831.

To the Commissioner of Circuit for the 13*th Division, dated* 5*th August,* 1831.

No. 652. 1823. Reg. VI. 1824. Reg. XI. Reg. XV.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 1st instant, and in reply to questions put by you to inform you that the Court are of opinion that the magistrate can interfere in cases of indigo disputes, only when they may be cognizable under Regulation XV. of 1824, as construed by the court's circular letter of the 27th December last, and that in such cases he may depute his assistant under the provisions of Regulation XI. 1824; but that in disputes regarding indigo, which may not come within the provisions of Regulation XV. 1824, the enquiry must be made and final decision passed in the civil court under Regulation VI. 1823.

August 5, 1831.

To the Deputy Secretary to Government in the Judicial Department, dated 12*th August,* 1831.

No. 653. 1819. Reg. X. Secs. 36 and 41.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 8th March last, transmitting an extract from the resolutions of Government in the Separate Department, under date the 1st March last, and the original correspondence therein referred to with the Board of Salt and Opium, regarding a construction of certain provisions of Regulation X. of 1819; and requesting the Court to prepare an explanatory enactment, should they consider the provisions in question not sufficiently clear.

2. In reply, I am directed to state that the Court are of opinion that Sections 36 and 41 of Regulation X. 1819, clearly recognize a chullaun, granted for a portion of a lot of salt for which a rowannah may have been taken out, as an instrument equally valid as a rowannah to protect the salt covered by it from confiscation: and that an explanatory enactment on that point is unnecessary.

3. With regard to the construction of the said regulation maintained by the Board of Salt and Opium, I am directed to observe that it would warrant the confiscation of a boat laden with salt, the owner of which, trusting to the validity of a chullaun, might have hired it without any design to aid in a smuggling transaction, an injustice which it cannot be supposed the framer of the regulation intended to legalize.

4. I am further directed to observe that the equitable construction of the regulation adopted by the Court is not, as it may at first appear to be, open to the objection of being calculated to defeat the object of the law, by enabling the holder of a rowannah to transport a greater quantity of salt under its cover than the quantity specified in it; as an endorsement on the rowannah, shewing the quantity of every portion of the lot described in it, for which a chullaun may be granted, is all that is required to prevent its serving to protect more than the portion remaining entitled to its protection.

August 12, 1831.

To the Judge of Purneah, dated 19*th August*, 1831.

No. 654.
1800.
Reg. I.
1805.
Reg. VIII. Sec. 29.
C. 8 to 14.

In reply to the questions contained in your letter of the 8th instant, I am directed to inform you, that the guardian of a minor being his representative is entitled to receive the minor's share of the proceeds of an estate, if managed by a surberakar; and that the zillah judge as no authority to interfere with him in the disposition of the minor's property.

August 19, 1831.

Extract from a letter addressed to Government on 26*th August*, 1831, *on the Commissioner of* 16*th Division's Circuit Report for the* 2*d Sessions of* 1829.

No. 655.
Assessment of villagers for the payment of chowkeydars.

Par. 11. The assessing the inhabitants of the villages for the support of a village police establishment of chowkeydars is authorized by no regulation, and is consequently illegal, and should immediately be prohibited, and the magistrate directed to confine his interference with the chowdeydars paid by the people to those cases in which he is authorized to interfere by the existing regulations. The commissioner is of course at liberty to propose any regulation he may deem proper to legalize the practice which obtains in Chittagong.

August 26, 1831.

To the Deputy Secretary to Government in the Judicial Department, dated 2d September, 1831.

No. 656.
1807.
Reg. II.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 30th ultimo, requesting the Court to ascertain from their law officers whether the exposition of the Mohummudan law of perjury, as given by the commissioner of circuit for the 9th division, in his letter of the 9th February last, viz. that it is impossible to convict a person of perjury unless he confess, is correct or not.

2. I am also directed to request that you will lay before the Honorable the Vice President in Council, the accompanying copies of two letters from the commissioner under dates the 22d September 1830 and 23d June last, on the same question of perjury, together with a copy of a minute recorded by Mr. Ross on the 16th ultimo, on the subject of those letters.

3. The Court have not deemed it necessary to require any further opinion from their law officers, as the question was maturely considered several years ago, and a joint futwa was then given by the three law officers of the Court, containing a full exposition of the law on the subject. A copy of that futwa, with an English translation, is submitted herewith, and it will be found to uphold the opinion already expressed by the Court, that a conviction of perjury may be had without the confession of the accused, and consequently that the view taken by the commissioner is erroneous. In further confirmation, and as shewing that practice has conformed to the law as declared in the futwa abovementioned, the Court also submit copies of some futwas given at subsequent periods, as well by the law officers of the courts of circuit, as of this Court.

4. Under these circumstances, and as the provisions of Regulation II. 1807, recognize the same principle, the Court see no necessity for any further declaratory law on the subject, especially as a reference can always be made to this Court, in cases of a difference of opinion between the commissioners of circuit and their law officers.

5. In the 22d paragraph of his letter of the 23d June last, the commissioner requests to be informed whether false depositions taken by native officers are perjury or not? The majority of the Court hold that a false deposition on oath taken by a native ministerial officer in the presence of the magistrate, (in the manner prescribed in the Court's circular order of the 12th December 1809,) relative to some judicial proceeding, and upon a point material to the issue thereof, is perjury. Messrs. Ross and Rattray desire me to state that the circular order above quoted allows the depositions of prosecutors and witnesses to be taken by the ministerial officers of the Foujdary Courts in the room in which the magistrate is sitting while engaged with other business, which is in fact allowing the depositions to be taken by the ministerial officers instead of by the magistrate, by whom, according to law, they should be taken, and that this mode of taking depositions not being authorized by the regulations, they (Messrs. Ross and Rattray) are of opinion that a legal conviction for perjury cannot be grounded on a deposition so taken.

6. With regard to the commissioner's deprecation of the Court's censure, for not committing certain witnesses for perjury, whom he considered to have been guilty of that

offence before him, the Court direct me to observe that the perversity imputed to him was inferred from the declaration in the 59th paragraph of his letter of the 9th February last, that because he referred a case and the accused were acquitted by the Court, he had not ordered the commitment of other persons whom he considered guilty of perjury; and because, at the end of the 61st paragraph, he declared, that until a law was passed in conformity to his own view of the matter, he doubted if any thing could make him consider it expedient to hazard an order to commit for perjury unless the criminal confessed, thereby virtually announcing his resolution not to order a commitment for perjury, although bound to do so in the performance of his duty as a criminal judge, and although he must have known, that, even under his own exposition of the law, it was competent to this Court to punish for the offence, in opposition to an acquitting futwa. Under the explanation however now offered, the Court are satisfied that he was actuated by the considerations stated by him in the case referred to.

Translation of a Question put to the Cazee ool Coozzat and Moofties of the Sudder Court, Calcutta, and of their Reply.

Question.—Whereas, from a futwa delivered in court in the year 1799, defining and determining the different sentences of Hudd, Kissaâs and Tazeer; and upon consulting the law authorities thereon quoted, namely, the Buhr-i-rayuk, the Moheet, the Ushbah and Nuzayer, and the futwas of Kazee Khan, it appears, that notwithstanding the existence of a doubt (Shoobu) which bars Hudd and Kissaâs, Tazeer may be inflicted upon strong presumption (*Zun-i-Ghalib;*) whether it be founded on evidence which does not possess the Nisab; or upon strong circumstances (Quraeen-i-Quveyeh,) by which the firm opinion of the Hakim is established.

The point in question, therefore, is, whether in cases of false evidence where there is a strong suspicion (Zun-i-Ghalib), arising either from the disagreement in the evidence of one or more witnesses; or the evident contradiction of a witness's depositions before different courts; or from strong circumstances (Quraeen-i-Quveyeh) occurring during the trial; or upon any other grounds; the Hakim can pass sentence of Tazeer; or under what other circumstances Tazeer may be inflicted in cases of perjury, according to the Mahomedan law.

Within a fortnight therefore a futwa comprehending a full view of the law on the subject in question, must be drawn up with the utmost possible attention, and laid before the court, in order that the necessary instructions may be thereupon issued to the judges and law officers of the different zilla and circuit courts.

Reply.—According to the text of the law, there are three ways in which sentence may be passed; 1st.—Upon evidence (Beyunu;) 2dly.—Upon confession (Iqrar;) 3rdly.—Refusal—the prisoner's refusing to take the oath on pleading not guilty (Nukool.)

And in some of the futwas of Ibnool Furs, it is stated, that judgment may be given upon strong circumstances (Quraeen-i-Quveyeh) which, in the opinion of the judge, nearly amount to a certainty.

In the commentaries (Shoorooh) two other rules are also laid down; One—Qusamah, which demands Deeyut, the other the knowledge of the Cauzee; which last, however, on account of the degeneracy of the age cannot be admitted.

All the law authorities however concur in stating that in cases of Hudd, sentence cannot be passed upon Nukool; except for larceny, when the stolen property must be restored; but amputation (Kitau) cannot be inflicted.

In cases of murder (Kissaâs-i-Nufs), if the prisoner refuse to take the oath, according to Aboo Huneefu he should be kept in confinement until he makes confession, or takes the required oath: in cases of retaliation for personal offences not affecting life (Kisas-i-Atraf) only Ursh shall be awarded; but according to the doctrine of the two disciples, Ursh is requisite in both cases. Judgment cannot be passed upon a refusal to take the oath (Nukool) in cases of Tazeer when the rights of God are concerned, which branches out of Hudd.

So that there are only three grounds upon which sentence can be given in cases of Tazeer, involving the rights of God; 1st.—Confession (Iqrar); 2d—clear evidence (Byuneh); and 3dly—strong circumstances (Quraeen Quveyeh).

Now false evidence, which incurs Tazeer as an offence against God, is a matter on which judgment cannot be passed on evidence (Byuneh) for a claim to that effect is the assertion of a negative: whereas evidence has been constituted for the purpose of establishing an affirmation, accordingly you will find in Law Compendiums, which take the Hedayu for their guide, that the term of false evidence is restricted to one who confesses that he has given false evidence.

But it appears from the Kefayu and other law authorities, that a person may be otherwise convicted of false evidence than by his own confession: for instance, a man gives evidence to the murder of a person, who afterwards turns out to be alive, or one deposes that he has seen the new moon, and thirty days elapse without the appearance of the succeeding new moon; or whenever in this, or any other way, a person is guilty of any palpable falsehood, such as giving evidence to a negative, he may be considered as a false witness. However some of the commentators on the Kunz maintain that Tazeer cannot be inflicted for false evidence, except the party confesses that he wilfully told the lie, and that the punishment is not otherwise due.

But the author of the Buhur-ool-Rayuk asserts that Tazeer may be inflicted, both when the party confesses his falsehood, or when it is otherwise reduced to a certainty in the opinion of the judge.

Hence it is evident, that the judge has the power of inflicting Tazeer in cases of false evidence, where he is, in his own mind, convinced of the guilt of the party accused, upon whatever grounds that conviction may be formed—and in like manner almost all the

sentences of the law, rest entirely upon the judgment of the Cazee (or Hakim), whether that be formed upon evidence, confession, refusal to take the oath, or strong circumstances.

Yet the acting upon the firm conviction, or strong presumption of the judge, is a point which has been admitted in cases of Tazeer, like that of the discretionary power with which the Government is invested for the preservation and the welfare of the country.

False evidence may therefore be proved in three ways: 1st.—Confession (Ikrar): 2d.—Strong circumstances (Quraeen-i-Quveyeh) which in the opinion of the judge reduces the matter to a certainty; as, when the point in question turns out directly contrary to the evidence, or the judge be convinced in his own mind of the falsehood of the witness by his deposing to a negative: 3rdly.—Strong circumstances, or direct inference, by which the judge entertains a strong presumption.

After quoting the above authorities, and adjusting these premises, we proceed to observe, that if the deposition of a witness be at variance with the claim of the plaintiff, or with the statement of another witness, or if the plaintiff accuse his witnesses of falsehood; although in either of these three cases the evidence must be rejected, yet the witness shall not thereby be considered as false. The same argument holds good where the evidence of a single witness differs from that of several others, because suspicion falls equally on both parties; unless in the above case it so happen, that other inferences be drawn to the conviction of this single witness, which, together with the deposition of the other witnesses, may establish his guilt in the opinion of the Hakim; as for instance, when the records of the province convict the witness of falsehood, or when the circumstances of the case are such as cannot be reconciled with the deposition of the witness: in such cases the judge can, upon his strong presumption, inflict Tazeer on the witness so offending.

In like manner, when the evidence of two sets of witnesses of the legal number disagree, neither party are liable to Tazeer, unless one party be convicted of falsehood by strong circumstances; in which case the judge can inflict Tazeer upon his own presumption, as also in cases where evidence is given to a negative, whether by one or more persons, the falsehood of such evidence being clearly ascertained, the judge is authorized to pass a sentence of Tazeer. Thus the rule is not restricted to a mere contradiction.

Where there exists a contradiction in the evidence of a witness before one or more courts and the difference be such that the two statements can in no way be reconciled with each other, for instance, if a witness depose that he saw A. kill B., mentioning the time and place in which the murder was committed, and afterwards, in the same court or some other, shall state that he did not witness the transaction; this is a direct retraction of his former evidence, and he cannot make the plea of forgetfulness: on the contrary he must acknowledge what he first stated to have been erroneous, and if this retraction be

made under a proper sense of repentance and contrition, he is not liable to Tazeer; but if with contempt and boldness, he is liable to Tazeer, and the Hakim is left to decide upon his own discretion what were the man's motives.

But if he first depose that he did not see A. kill B. on such a day at such a place; and afterwards, before the same court, or another, should state in evidence that he was an eye witness to the transaction, mentioning both the time and place thereof, although his declarations be at variance with each other, and his evidence be inadmissible from the suspicion of falsehood thereby incurred, yet he is not liable to Tazeer. Because he may urge as a plea, that what he first stated was through forgetfulness, and that he afterwards recollected the circumstance; moreover he may also excuse himself by saying that, at first, he was induced to conceal the truth, from fear and alarm, but that he has now revealed the whole truth.

Now the case differs widely where the witness first deposes to his having seen the fact, and subsequently denies his knowledge of it, for he cannot then plead that he, through forgetfulness, spoke of having seen it, that is, he cannot say that ignorance of the matter having been impressed on his mind, had been forgotten, but that he afterwards recollected his forgotten ignorance; for ignorance is continuative, and cannot be impressed on the mind at one time, and forgotten at another. It should also be remarked that in the second case where the witness deposes that he did not see the homicide at such a time and place, he does not give evidence to a negative, but merely states that he himself knows nothing of the matter. This cannot be considered as evidence to a negative (Shuhadut bur nufee) which would be liable to Tazeer.

If however the difference be not very great, and does not amount to a direct contradiction, but merely vary in point of time, place, or instrument, or any thing else which is not very material; such as for instance in the case above quoted, if the witness deposes that he saw A. murder B. at Bussorah on a Friday, and afterwards recollects himself and states that it was on a Thursday; or that the murder was committed at Koofa, and not Bussorah; if such like difference occur before the same court, and the witness pleads forgetfulness at the time, his evidence may be admitted, but not if the contradiction occurs before another court; yet in neither case is he liable to Tazeer.

If the deposition refers to any saying, and not to any action, such as a confession and the like, in that case any variation in the evidence respecting the time or place does not render it inadmissible; because the expression may have been used more than once.

When the evidence of one or more witnesses is highly improbable, and bordering close upon impossibility: such as a man deposing, that at midnight he saw A. shoot B. with an arrow, which entered at one side of the body and went out at the other, and occasioned B.'s death; adding that when A. shot the arrow, he (the witness) was standing twenty yards from the spot where the fact took place and saw it. Now if the night was very dark, so as to render it exceedingly improbable that he should have been able to have discerned such minute particulars even at a less distance than twenty yards, the judge

may, in that case, upon his own strong conviction, pass sentence of Tazeer on the person or persons so offending.

In like manner also, if it be proved in the course of the trial, that between the spot where the transaction took place, and where the witness states himself to have been standing when he saw the murder, there was such an impediment as must necessarily have obstructed his sight; in this case also the judge may decide upon the falsehood, and inflict Tazeer.

If the defendant brings evidence of such an exception to the plaintiff's witnesses, as may amount to a legal disqualification; namely, an exception which must be admitted as comprehending the right of God or the right of man; and the exception is proved and affects the right of God, which is Hudd; some lawyers, amongst whom is the author of the Buhur ool Rayik, say that the plaintiff's witnesses shall suffer Hudd, that their legal incompetency as witnesses is proved in the course of the proof of Hudd, and that their evidence shall be rejected; but there not being any proof to establish either the certainty, or a strong presumption of the falsity of their evidence, they are not liable to Tazeer. Yet some others, who consider the right of God as common both to Hudd and Tazeer, maintain that the witnesses shall suffer Tazeer because of this right as the right of God, not on account of the proof of falsehood; and that their evidence shall be rejected because of their profligacy.

If some exception comprehending the right of man is proved, as where, for instance the defendant declares that he had compromised with the plaintiff's witnesses for ten dirhums not to give false evidence, and notwithstanding that he had given them the money they gave false evidence, and he insists on the money being returned to him, in this case, the villainy of the plaintiff's witnesses is proved, their evidence rendered inadmissible; and the magistrate is competent to inflict Tazeer on his firm conviction of their being guilty of falsehood.

If the exception be proved, by shewing that the plaintiff admitted the profligacy of his witnesses, the evidence of the plaintiff's witnesses shall be rejected, yet they are not liable to Tazeer as the falsity of their evidence is not proved. Yet, in analogy to the case of the exception which comprehends the right of the individual, it may be said that when the exception is proved by evidence to the confession of the plaintiff, that his witnesses were not present at the transaction, (and the witnesses to that confession further depose that on the day the transaction took place at Bussorah, they saw the plaintiff's witnesses at Koofa), the falsehood of the plaintiff's witnesses being thus proved in the course of proving the confession, they may be subjected to Tazeer: and in like manner where a witness's confession of his own falsehood is proved in the course of proving the plaintiff's confession of the falsehood of his witnesses; as where the witnesses of the defendant state that at the time the plaintiff acknowledged the evidence of his witnesses to be untrue, they expressed their surprise, and asked his witnesses how the case stood, they replied saying that it was true they had given false evidence: the plaintiff's witnesses are liable to Tazeer.

With regard to any objection to the evidence, namely, an objection from the defendant that a partnership exists between the witness and the plaintiff, or that they stand in the relationship to each other of father and son, husband and wife, or that the witness from some worldly motive is his (the defendant's) enemy, or that he is a slave, or has suffered Hudd for slander, and the defendant shall make good his objection and substantiate his charge by evidence, the depositions of the plaintiff's witnesses become inadmissible; but they are not thereby liable to Tazeer. But an objection touching the competency of a witness is in all respects similar to an objection to his character.

The sentence of Tazeer in the above cases does not depend upon the proof of the falsehood being given after judgment has been passed, so far from it that Tazeer may be inflicted for giving false evidence, whether the falsehood is discovered after a decree has been given, or before the evidence is acted upon.

All the learned agree in sentencing a false witness to Tazeer, with the exception of Aboo Huneefu, who thinks public exposure is sufficient. But this is, in some cases, a more severe punishment than a private flogging. The two disciples in addition to public exposure require also flogging and confinement as stated in the Futeh-ool-Kudeer.

The author of the Tunvees-ool-Ubsar, following the opinion of the author of the Kunz, lays it down as a rule that, in conformity to the doctrine of Aboo Huneefu a false witness should be publicly exposed: so that the rule is applicable to every case. But Aboo Mahommed restricts the opinion and tells us that a difference of opinion prevails in cases when the witness's motives for retracting his evidence are unknown, for Aboo Huneefu is merely for publicly exposing the offender; whilst the two disciples have gone so far as to say that he should be flogged. But if it appear that he is sorry for his misconduct and expresses great contrition, they all agree that he is not liable to Tazeer; but that where he seems to have retracted his evidence without altering his conduct the Tazeer shall be flogging, and Shums-ool-Aimeh tell us that the Tusheer or public exposure meets with the sanction of the two disciples.

It is evident therefore that the two disciples authorize public exposure, flogging and confinement; the Cazee may therefore inflict either of these punishments as he may think proper. This is also according to the Munh-ool Ghuffar.

The result is this, that Tazeer depends generally on the firm opinion of the magistrate who is competent to exercise a just degree of power for the purpose of ridding the land of wickedness and corruption, and with a view of consulting the public welfare.

If, therefore, on account of the wickedness of the times, it should become a common practice for witnesses to give false evidence, so as to affect and endanger the persons, property, or lands of individuals; the Hakim is not only empowered, but it is a duty absolutely incumbent on him, to inflict Tazeer by flogging and confinement on such witnesses, as shall in his firm opinion, founded upon strong circumstances, (Quraeen i-Quveyeh) or on any other grounds, be proved to have given false evidence. Greater

severity should also be exercised towards false witnesses in case of Hudd and Kissaas, than where merely property, &c. is concerned.

There are three ways by which you may be satisfied as to the falsehood of a witness.

One is, when the witness himself confesses the falsehood of his evidence; either before the same magistrate in whose presence he gave that evidence, or before some other magistrate; for if he made the confession before any body but a magistrate, and the defendant wish to prove that he did so, he shall not be allowed; though according to some, who maintain both Hudd and Tazeer to be incurred in cases where the right of God is concerned, he may prove such a confession. The case above supposed implies a full retraction. If he first depose to his having been an eye-witness to a transaction, and shall afterwards state that he did not see it take place, this is a virtual retraction, and renders the offender liable to Tazeer.

Now the retraction, which incurs Tazeer, is such as is attended with obstinate and hardened contempt; and not when the person, so offending, shews contrition for his error; for in this latter case the learned agree that he is not liable to Tazeer. It remains for the Hakim to exercise his discretion in deciding as to the motives of the person making such retraction, whether it were made from hardened contempt, or a deep sense of contrition.

If there shall be strong circumstances (Quraeen-i-Quveyeh) to warrant the conclusion that the retraction has been made from the fear of God, and a dread of disgrace in the eyes of the world, the person so retracting shall not be liable to Tazeer.

If on the other hand there be strong circumstances to warrant the conclusion that the person so retracting had neither the fear of God or man before his eyes, nor any hesitation in giving false evidence, or in retracting it, or if it appear that he made the retraction from some enmity arisen between him and the plaintiff subsequent to his former deposition, or from the apprehension that his falsehood would come to the knowledge of the magistrate, and that he would be punished accordingly; in these several cases, he is liable to suffer Tazeer.

Another mode of ascertaining the falsehood of a witness is when the matter deposed to turns out contrary to the evidence.

The third mode is when evidence is given to an unqualified negative.

The following instances may serve as examples of the manner in which a strong presumption is formed of the falsehood of a witness.

When the evidence of a witness is at variance with the evidence of one or more witnesses, and the testimony of the latter is corroborated, while that of the former is confuted by the documentary evidence of the plaintiff, and the circumstances of the case are such as cannot consistently be reconciled with the evidence of that witness. Also where the evidence of two parties of witnesses (each possessing the Nisab) is at variance, and one party depose to an unqualified negative: the party so offending shall be liable to Tazeer, or though it be not evidence to a negative, if strong circumstances shall falsify the evidence of either party, such party shall be liable to Tazeer.

Or if the evidence of one or more witnesses, although not at variance with that of other witnesses, be highly improbable: for instance, if a person deposes that on a very dark night he was an eye-witness to a transaction accompanied with several minute particulars from such a distance as to render the fact of his having seen highly improbable and almost impossible; or it appear that there was some impediment to the view, between the spot where he was standing, and where the transaction took place (so that he could not possibly have seen it). Or if it be proved by the evidence of the defendant's witnesses that the witnesses of the plaintiff had made an arrangement with the defendant and had from him received the sum of ten dirhums not to give false evidence, and had notwithstanding given false evidence. Or that for the purpose of giving false evidence, the said witnesses had been taken into the plaintiff's service, and had received the wages of ten dirhums out of the defendant's property, which was in the hands of the plaintiff.

Or if in the course of proving the plaintiff's confession, that his witnesses were not present at the time of the transaction, it be proved by the witnesses to the said confession that not only were the plaintiff's witnesses not actually present, but were at some other place, so distant as to have rendered it impossible for them to have been at both places the same day.

Or if when attempting to prove that the plaintiff had admitted that his witnesses had given false evidence, it be also proved that they themselves made a confession of their own falsehood.

(Signed) Mohummud Nujum-ooddeen Khan, Cauzee-ool-Coozat.
Moofty Mohummud Rashid.
Moofty Suraj-ooddeen Ali Khan.

September 2d, 1831.

To the Commissioner of Circuit for the 12th Division, dated 2d September, 1831.

No. 657.
1807.
Reg. IX. Sec. 123.

The Court of Nizamut Adawlut have had before them your letter dated the 27th June last, submitting for their consideration and orders, your correspondence with the acting magistrate of Monghyr and certain Persian proceedings, in the case of Bhowanee Pershad versus Sheikh Peer Buksh and others.

2. The main question referred for the Court's consideration is, whether the commissioner, in calling for an explanation in a criminal case decided by the joint magistrate, was competent to direct that the prisoners sentenced by the joint magistrate should be admitted to bail, until a final order had been passed by the commissioner. This question has been repeatedly decided by the Court in the affirmative.—(Vide Cons. No. 489, page 207, vol. 1, dated December 12, 1828.)

3. The Court observe that the joint magistrate appears to have taken an erroneous view of your order, in supposing it to be a reversal of his own. Had it been such, the grounds of the reversal would of course have been stated: but as it was to enlarge a prisoner on bail pending the appeal, a simple order was sufficient and should have been immediately carried into effect.

4. The Court do not think it necessary to notice the various other points discussed in the correspondence, except the objection of the joint magistrate to your having received the petition of appeal from his orders from Dost Mahomed and two others, calling themselves brothers of the prisoners, on plain paper. On this subject the Court direct me to observe that no petitions should be received by you on plain paper except from prisoners confined in the criminal jail.

1814. Reg. XXVIII. Sec. 19.

September 2d, 1831.

From the Commissioner of Circuit, 16th Division, to the Register of the Presidency Court of Nizamut Adawlut, dated the 15th August, 1831.

No. 658.

With reference to your letter of 27th May, 1831, covering copies of correspondence between the Court and the magistrate of Hooghly, and conveying the expression of the Court's opinion that I shall not deem it necessary to require the attendance of the witnesses alluded to therein, I beg to submit for the Court's consideration and orders that the case in which the attendance of the witnesses has been required is one of forgery, committed for trial under the directions of the civil court. The deed alleged to have been forged bears date subsequent to the death of the party who is said to have signed it, and the law officer considers vivâ voce evidence before the court of the death of the alleged signer as absolutely necessary to conviction. If the Court of Nizamut Adawlut will however be pleased to order the Hooghly magistrate to take evidence of the death of Doorga Pershad Mokerjee, and to allow the record of that evidence to be admitted in proof before my court, I can proceed with the trial and refer the case to the Sudder Nizamut on the Cauzee's futwah, which, as the case now stands, will be for an acquittal for want of the proof alluded to. I await the Court's instructions.

1793. Reg. IX. Sec. 47. 1803. Reg. VII. Sec. 15, Cl. 1.

To the Commissioner of Circuit, 16th Division, dated the 16th September, 1831.

I am directed by the Court of Nizamut Adawlut, in reply to your letter of the 15th ultimo, to inform you that the Court cannot authorize the evidence to the fact of the death of Doorga Pershad Mokerjee, which appears to be a point material to the issue of the case of Ram Chunder and other prisoners, to be taken by the magistrate of Hooghly in the absence of the accused; and to request that you will proceed to dispose of the case, which appears to have been postponed beyond the legal term of two sessions, without further delay.

September 16th, 1831.

To the Assignee of the Estate of Messrs. Palmer and Co., dated the 30th September, 1831.

No. 659.

I am directed by the Court of Sudder Dewanny Adawlut to inform you that the factory of Serecole and its dependencies, situate in Zillah Jessore, was pledged by the late Firm of Messrs. Palmer and Co. as security for the execution passed by the Court in

1797. Reg. XVI. Sec. 4.

1803.
Reg. V. Sec. 38.
1814.
Reg. XXVI.
Sec. 13.

favor of the respondent in the case of Baboo Ramchurn, moktar of Baboo Madhab Suhai and Baboo Benee Suhai, heirs of Baboo Doarka Doss deceased, appellant, versus Joye Kishen Doss, respondent, on its being appealed by Baboo Ramchurn to His Majesty in council.

2. The said factory being situated within the jurisdiction of the Court, cannot, under the regulations of Government, be sold or otherwise disposed of but with the aforesaid lien on it. I am therefore directed to request that in the event of its being sold or otherwise disposed of by you, you will inform the intending purchaser or person to whom it may be intended to transfer it otherwise than by sale, that the Court have a lien on the factory until the appeal to the King in council is determined in favor of the respondent, or, in the event of a decision being passed in favor of the appellant, until it shall have been fully satisfied by the respondent.

N. B. A copy of this letter was, on the same date, communicated to the judge of Jessore, with instructions, in the event of the factory being advertised for sale, to issue a proclamation declaratory of the lien thereon.

September 30*th*, 1831.

To the Judge of Zillah Shahabad, dated 21*st October*, 1831.

No. 660.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 15th ultimo, soliciting the Court's opinion as to whether proprietors of estates are entitled to jereemana or penalty equal to the interest on arrears of land rent.

2. In reply, I am directed to inform you that the Court are not aware of any regulation which authorizes proprietors to demand more than the rent claimable by them, with the legal interest thereon from the date on which it may be payable. The suit however, before you appearing to be a regular original suit, which may eventually be brought judicially before the Court, they desire that you will decide it according to your own judgment, leaving the party dissatisfied with your decision to appeal therefrom.

October 21*st*, 1831.

To the Commissioner of Circuit for the 13*th Division, dated* 21*st October*, 1831.

No. 661.
1823.
Reg. VI.
1824.
Reg. XV.

In reply to your letter of the 19th instant, forwarding a further reference from the joint magistrate of Pubna, as to the power of a magistrate to attach indigo crops, I am directed by the Court of Nizamut Adawlut to request you will refer the joint magistrate to the order contained in my letter of the 5th August, [see Cons. No. 652 p. 20 of this volume] and to inform him that in cases in which he cannot act himself he must refer the parties to the civil court.

October 21*st*, 1831.

Resolution of the Nizamut Adawlut held on the 9th December, 1831.

No. 662.
1831.
Reg. IX. Sec. 3.
C. 2, Sec. 4.

Resolved—That by "Criminal Trials" in Section 3, Regulation IX. 1831, shall be understood the cases of persons tried for a criminal offence by any court of inferior jurisdiction: cases in which interference with any order issued by an inferior court prior to its final judgment in such trials, may appear necessary, to be brought before the court as its general English sittings.

2. That in the cases alluded to in Clause 2, Section 4, Regulation IX. 1831, a futwa need not, unless specially required, be taken from the law officers of the Nizamut Adawlut; but this rule is to be considered applicable only to trials called for by the Court, and not to those referred to it by a commissioner of circuit or a session judge; in which latter a futwa shall be required as heretofore.

December 9th, 1831.

From the Judge of Jungle Mehals, dated 5th December, 1831.

No. 663.
1800.
Reg. I.
1805.
Reg. VIII. Sec. 29,
Cl. 8 to 14.

Buwanee Sing, a jageerdar residing in the zumeendary of Pachete, died, leaving a widow and an infant son his sole heir; the widow after a short time applied to this court to appoint a person, named Damodhur Doss Ghosaeen, the guardian of her infant son, stating her inability to manage his estate.

2. The widow being the natural guardian of her infant son, it appears to me, that she is competent to appoint whomsoever she pleases to take care of him or manage his estate, without any reference to the civil court, and I beg to be informed if the Sudder Dewanny concur in this construction of the regulations.

3. The result of my enquiries into the case under notice is a firm conviction that it would be most for the benefit of the minor to farm the estate during his minority, and if the interference of this court is authorized or called for, it is the mode of management, subject of course to the approval of the Sudder Dewanny, that I should recommend.

4. The several courts of wards are empowered by Regulation VI. 1822, to adopt farming or any other form of management, and I conclude therefore the civil courts when acting in that capacity must be considered to possess the same powers. Previously however to taking any steps in the business I beg to be favored with the opinion of the Sudder Court.

To the Judge of Zillah Jungle Mehals, dated 16th December, 1831.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 5th instant, requesting the Court's opinion as to the propriety of your interference in the appointment of a guardian of the minor Buwanee Sing.

2. In reply, I am directed to inform you that if the estate of the minor is a joint undivided estate, you should, on the application of the minor's mother, appoint a guardian under the provisions of Regulation I. 1800, and report your nomination for the confirmation of the Court.

3. With reference to the 3d paragraph of your letter the Court are of opinion that guardians or managers appointed under Regulation I. 1800, must be left to exercise

their own judgment as to the best mode of managing the estates of the minors committed to their care.

December 16*th*, 1831.

From the Commissioner of Circuit, 15*th Division, dated* 8*th December*, 1831.

No. 664.
1807.
Reg. IX Sec. 19
1825.
Reg. IV. Sec. 2, Cl. 1.

I have the honor to transmit herewith for the consideration and orders of the Nizamut Adawlut copy of a letter addressed to me by the magistrate of the city of Dacca, on the subject of the defect in the state of the law, as at present existing, for preventing affrays, and for punishing persons who may clearly meditate a breach of the peace, and take measures to that end, but who, through the intervention of the police or from other causes, may not be able to accomplish their design.

2. From the tenor of Clause 1, Section 2, Regulation IV. 1825, I am inclined to think that assembling armed men, or taking other unlawful measures, with the evident intention of committing a breach of the peace, is, on conviction, an offence punishable by the magistrate with fine and imprisonment under the discretionary powers vested in him by Section 19, Regulation IX. 1807. If however, I am wrong on this point, I think the offence should be made punishable by law.

To the Commissioner of Circuit of 15*th Division, dated* 23*d December*, 1831.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 8th instant, and its enclosure from the magistrate of the city of Dacca, relating to the state of the law as regards the punishment of persons meditating affrays or breaches of the peace; and in reply to inform you that the Court entirely coincide with the opinion expressed in the 2d paragraph of your letter, and to request that you will transmit copies thereof and of this letter to the magistrate for his information and guidance.

December 23*d*, 1831.

To the Judge of Zillah Mirzapore, dated 6*th January*, 1832.

No. 665.
1806.
Reg. II. Sec. 5.

In reply to your letter of the 13th ultimo, I am directed by the Court of Sudder Dewanny Adawlut to inform you that as the provisions of Section 5, Regulation II. 1806, do not restrict the power of attachment to property within the district, the Court are of opinion that the judge may cause the defendant's property to be attached on his inability to give the requisite security, wherever the same may be situated.

January 6*th*, 1832.

Extract from a letter to the Judge of City Dacca, dated 6*th January*, 1832.

No. 666.
1800.
Reg I.
1805.
Reg VIII. Sec. 29,
Cl. 8 to 14.

Para. 2. The Court observe that the appointment of the guardian having been confirmed by them, you should not have removed him, Moomtazoodeen being still in his non-age, without their sanction. They do not consider the reasons assigned by you

sufficient to warrant his removal, for though the possession of the estate, for the protection of which he was appointed, is in the hands of the opposite party, the claim of the minor thereto remains to be decided, and the continuance of the guardian may be necessary to bring forward, and prosecute a suit to recover possession in the civil court in a regular manner. The Court therefore annul that part of your order, and direct that the guardian be restored to his office.

January 6th, 1832.

Extract from a letter addressed to the Moorshedabad Provincial Court of Appeal, dated 13th January, 1832.

No. 667.
1814.
Reg. XXIII. Sec. 9.

Para. 2. In reply, I am directed to state that the Court entirely concur in the view taken of the subject by you, and that the neglect of the moonsiff being one continued act, the judge was not competent to fine him in a larger sum than twenty rupees.

3. With reference to the 6th paragraph of the judge's letter of the 19th November last, the Court are of opinion that in cases of repeated or continued neglect and disobedience, if the judge consider a fine of twenty rupees indequate to the offence, he is at liberty, under the provisions of Section 9, Regulation XXIII. 1814, to suspend him from office, and report his conduct for the orders of the superior authorities.

January 13th, 1832.

To the Judge of the City of Moorshedabad, dated 13th January, 1832.

No. 668.
1814.
Reg. XXVI. Sec. 14, Cl. 4 to 7.
1832.
Reg. VII. Sec. 5.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 31st ultimo, requesting instructions on certain points connected with the operation of Regulation V. 1831, and to communicate to you the following replies.

2. Question 1st.—The sudder ameens are to be guided, in regard to tulubana by the rules in force for the guidance of the zillah and city judges previously to the enactment of Regulation V. 1831.

3. Question 2d—The periodical civil reports are to be forwarded to this Court by the zillah and city judges.

4. Question 3d.*—On the subject of this question the Court direct me to inform you that you should apply to the civil auditor or direct to Government.

1831.
Reg. V. Sec. 27.

5. Question 4th.—In suits instituted before a zillah or city judge, whether decided by him before or after the promulgation of Regulation V. 1831, the appeal lies to the Sudder Dewanny Adawlut, supposing of course that it has not been preferred to the provincial court of appeal before the promulgation of the regulation in question.

January 13th, 1832.

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* 3d Question.—In contingent extraordinary disbursements, what is the extent of the authority of a distric judge without previous reference? At present the charges not included on the fixed establishment are countersigned by the court of appeal.

To the Acting Judge of Purnea, dated 13th January, 1832.

No. 669.
1819.
Reg. II. Sec. 30.

In reply to your letter of the 30th ultimo, I am directed by the Court of Sudder Dewanny Adawlut to inform you that suits in which lands held exempt from assessment from the subject of dispute, but in which the validity of the tenure is not contested, are not referrible to the collector under the provisions of Section 30, Regulation II. of 1819.

January 13th, 1832.

From Joint Magistrate of Bugoora, dated 29th December, 1831.

No. 670.
1817.
Reg. XVII. Sec. 6, Cl. 4.

With reference to the extract, forwarded to me by the commissioner of this division, from the Court's proceedings under date the 15th ultimo, I beg to state that my impression of the meaning of the clause referred to by the Court was, that it only indicated the law as regarded the prosecution of the adulteress by her husband. With submission I beg to observe that no mention, or allusion, however slight, is made in Clause 4, Section 6, Regulation XVII. 1817, as to the course to be adopted by the husband towards the adulterer, and I submit that, considering the wording of the clause, I cannot be held to have acted in direct opposition to the law as it is promulgated.

2. I take the opportunity to solicit instructions from the Court, regarding the crime of rape: whether I am at liberty to commit the perpetrator, if no complaint be preferred, the person on whom the crime has been committed or her relations, through fear, not prosecuting. I await the orders of the Court previous to investigating a case which has been brought to my notice, wherein the injured person is prevented by threats from prosecuting.

To the Joint Magistrate of Bugoora, dated 13th January, 1832.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 29th ultimo, stating, with reference to the Court's proceedings of the 15th November last, on the trial of the prisoner Noaz Mundul, the construction put by you on Clause 4, Section 6, Regulation XVII. 1817, and soliciting the Court's instructions regarding the commitment of the perpetrators of rape, when no complaints have been preferred against them for that offence.

2. The Court are of opinion that although the wording of Clause 4, Section 6, Regulation XVII. of 1817, does not specifically restrict the magistrate in cases of adultery from proceeding against the adulterer, when the husband of the adulteress does not come forward to prosecute, yet that by the spirit of the enactment the restriction is equally applicable to such cases.

3. The Court further direct me to observe that there is nothing in the regulations which prohibits a magistrate from taking cognizance of cases of rape in which no complaint is preferred, but that he should exercise this power with the utmost discretion and with due regard to the feelings of the injured party and her family. (See Construction No. 403, page 168, vol. I., dated 24th August, 1825.)

January 13th, 1832.

No. 672.
1806.
Reg. XVII.

The Court on the 20th January, 1832, recorded their opinion that the proprietors of estates are not entitled to the benefit of Regulation XVII. 1806, in cases of *Bye bil wuffa* in which the period specified for redemption expired prior to the promulgation of the said regulation.

January 20th, 1832.

Extract from a letter addressed to the Moorshedabad Provincial Court of Appeal, dated 27th January, 1832.

No. 673.
1831.
Reg. V. Sec. 27, Cl. 1.

Para. 2. The Court are of opinion that your construction of Clause 1, Section 27, Regulation V. 1831, viz. "that all suits instituted in the Zillah and City Courts previous "to the 1st January, 1832, will be appealable to the Provincial Courts at whatever period "they may be decided," is erroneous, and that all appeals from the decisions of a zillah or city judge, which shall not have been preferred to the Provincial Court prior to the date fixed by the Governor General in Council, for the commencement of the operation of the regulation in question, lie to the Sudder Dewanny Adawlut, at whatever time the original suit may have been instituted.

January 27th, 1832.

Resolution of the Nizamut Adawlut under date the 27th January, 1832.

No. 674.
1831.
Reg. IX. Sec. 4, Cl 2.

On the trial for *murder* the law officer of the Circuit Court acquitted the prisoner. The commissioner dissenting referred the trial to the Nizamut Adawlut with his opinion that the prisoner was guilty of *affray with homicide.* The law officer of the Nizamut Adawlut also acquitted, but the judge who revised the trial deemed the prisoner convicted of *manslaughter.* The Court were of opinion that the judge was competent to dispose of the case without calling in another judge.

January 27th, 1832.

Extract from a Resolution of the Court of Sudder Dewanny Adawlut, under date the 17th February, 1832.

No. 675.
1831.
Reg. IX Sec 2, Cl. 2.
1817.
Reg. XIX. Sec. 8.

Para. 1. With reference to the provisions of Section 2, Regulation IX. 1831, the following rules of practice are agreed to by the Court.

Para. 3. The Court are of opinion that if the decision of the lower court be confirmed without the attendance of the opposite party, the appellant is not entitled to receive back any proportion of the value of the stamp paper on which his petition of appeal is written; and that the appellant's vakeel is entitled to the whole of the fee deposited by the appellant.

4. If the attendance of the opposite party shall not be required, and the said party shall, nevertheless, file an answer to the petition of appeal through a vakeel of the Court, the fee of the said vakeel shall be payable by the opposite party himself.

5. If an injunction be issued for a revision of the decision, the Court are of opinion, that in conformity to the rule prescribed in Section VIII. Regulation XIX. 1817, the stamp duty paid by the appellant on his petition of appeal should be returned to him, and the fees of the vakeel of the appellant and respondent (if attending) limited to a sum not exceeding one-fourth of the established fee.

February 17, 1832.

To the Judge of Zillah Mymensing, dated 24th February, 1832.

No. 676.
1831.
Reg. V. Sec. 16.

The Court of Sudder Dewanny Adawlut having had before them your monthly Reports for January, 1832, forwarded with your letter of the 11th instant, observe that appeals from the decisions of moonsiffs appear to have been referred to and disposed of in the month of January by Moolvee Jelalooddeen your principal sudder ameen, and by Sumboonath sudder ameen, and that in your statement of suits recalled from the registers and sudder ameens whose offices have been abolished, you state that you have referred them to the above mentioned officers as having been instituted previous to the 1st of January, 1832. By Clause 2, Section 16, Regulation V. 1831, the judge cannot, after the period fixed for the operation of the regulation, refer appeals to the sudder ameens, nor can he, without special authority from this Court, which has not been obtained by you, refer appeals to the principal sudder ameens. Under these circumstances, the decisions and orders passed by the above mentioned officers on appeals referred to them subsequent to the 1st January, 1832, the date of the promulgation of the regulation in your district, are not valid. The Court therefore desire that you will recal from their files all such appeals as are at present pending before them, and that, replacing on the file those disposed of by them since the date of the promulgation of the regulation, you will dispose of them yourself.

February 24, 1832.

To the Judge of Zillah Backergunge, dated 24th February, 1832.

No. 677.
1831.
Reg. VIII. Sec. 20.
1822.
Reg. VII. Sec. 23, Cl. 3.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 11th instant, requesting the Court's opinion whether the decrees of a collector passed under Regulation VIII. 1831, are to be enforced by the judge or by the collector; and in reply to refer you to Section 20 of that regulation, by which the rules for the execution of awards prescribed in Clause 3, Section 23, Regulation VII. of 1822, are declared applicable to awards made by collectors under the first mentioned regulation.

February 24, 1832.

To the Commissioner of Circuit for the 14th Division, dated 24th February, 1832.

No. 678.
1824.
Reg. XI. Secs. 2 & 3.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 10th instant and its enclosure, and in reply to communicate to you the

Court's opinion that the deputation charges of assistants to the magistrates, authorized by Section 3, Regulation XI. 1824, if not paid by the parties, should be realized by the same process as costs of suit in civil cases; and that a commissioner of circuit is competent to exercise the same power as the magistrate under that regulation, in ordering the deputation of an assistant duly qualified, (that is vested with special powers,) and to adjudge the payment of his deputation charges.

February 24, 1832.

From the Commissioner of Circuit for the Division of Bundelcund to the Register of the Nizamut Adawlut, Western Provinces, dated 24th February, 1832.

No. 679.

1817. Reg. XX. Sec. 23. 1829. Reg. X. Sch. B. Art 1.

I have the honor to submit for the consideration and orders of the Nizamut Adawlut, copy of a letter dated the 24th December, from the magistrate of Banda.

2. It appears to me that the major may be considered to include the minor, that is, if a moochulka on plain paper is valid under the regulations when taken from witnesses to compel their attendance before the Court of Circuit, it would be no less valid in the lower Courts. With reference however to the 4th paragraph of the magistrate's letter, I solicit the sentiments of the Court.

From the Magistrate of Banda to the Commissioner of Circuit, 7th Division, dated 24th December, 1832.

I have the honor to submit for your consideration the following observations relative to the execution of moochulkas, the present mode of procedure regarding which appears to me of doubtful legality.

2. By Article 1 of Schedule B. in Regulation X. 1829, moochulkas of all descriptions with the exception of those taken from prisoners on their release from the criminal gaol are required to be written on stampt paper; subsequently, (in the shape of an erratum,) the exemption from duty was extended to moochulkas taken from witnesses required to attend the Court of Circuit.

3. But with respect to the moochulkas which it is the common practice for magistrates to take from parties in cases before them, to secure their attendance during the investigation, no exemption is granted by the regulation above specified, consequently all such moochulkas should be written on stampt paper. The same observation applies to the moochulkas taken from prosecutors and witnesses by the police darogahs under the provisions of Regulation XX. 1817, for which likewise no exemption is specified.

4. The execution of such recognizances as those above adverted to, being therefore illegal, it admits of question how far the amount of a recognizance so executed may be recoverable from individuals, in the event of the same being forfeited. At the same time, it must be allowed, that the imposition of a tax of this nature on individuals, except when the recognizance entered into may be of the nature of bail bonds, or personal security for appearance, would be a great hardship, and have the effect of inducing all parties to

combine in concealing crime, and I conceive therefore that I have only to bring the omission to the notice of the higher authorities to ensure the extension of the exemption to the cases above specified.

From the Register of the Sudder Dewanny Adawlut, Western Provinces, to the Register of the Presidency Sudder Nizamut Adawlut, dated 7th March, 1832.

I am directed by the Court of Nizamut Adawlut for the Western Provinces to forward to you the enclosed copies of letters received from the commissioner of Bundelkund to be laid before the Sudder Court of the Presidency. The Court are of opinion that under the terms of the exemption contained in Schedule B, viz. " Mochulkas and recog- " nizances taken from prosecutors and witnesses to secure attendance at criminal trials," the moochulkas in question may be taken upon plain paper. Should the Sudder Court of the Presidency coincide in the view of the case, the commissioner will be directed to observe this construction of the regulation.

The Presidency Court, on the 18*th May,* 1832, *concurred in the above construction.*

7th March, 1832.

From the Judges of the Bareilly Provincial Court of Appeal to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 10*th February,* 1832.

No. 680.
1831.
Reg V. Sec. 27, Cl 2.

We request you will submit the accompanying letter to the Court of Sudder Dewanny Adawlut.

2. We are of opinion this letter will put the Court sufficiently in possession of the matter upon which we have to intreat the orders of the Court, whether it is for us, under the regulations of 1831, to undertake the investigation of the charges tendered by Mr. Oldfield, and examine the papers and proceedings recently and formerly forwarded to us from Cawnpoor; or, whether all letters, papers and proceedings belonging to the accusations against the pundit should not be forwarded to the Superior Court.

3. The earliest letter received here from the Civil Court of Cawnpoor upon this subject and intimating the suspension of the pundit, is dated the 18th March last, and reached us on the 23d of the same. Persian proceedings reached us on the 2d April, and more were promised. On the 26th December, we received and sanctioned Mr. Oldfield's nomination of a person to officiate in the office of the pundit sudder ameen, and the letter now forwarded was not received with Persian missils till the 9th ultimo. No part of the case or cases involving the pundit sudder ameen of Cawnpoor, has in fact ever been in consequence taken up by this court, and we cannot but doubt whether the pundit's cases are to be considered pending before this court in the manner contemplated by Clause 2, Section 27, Regulation V. 1831, zillah Cawnpoor being clearly comprehended within the first Clause of that Section.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 7th March, 1832.

I am directed by the Court of Sudder Dewanny Adawlut for the Western Provinces to transmit the enclosed copies of correspondence relative to the oppression and misconduct of the pundit sudder ameen of the Court of Zillah Cawnpore to be laid before the Sudder Court of the Presidency. It will be observed that the case in question has been entertained for a very considerable time by the Court of Appeal and various orders have been passed on it: this Court is therefore of opinion that it is a case clearly falling within the intention of the rule contained in Clause 2, Section 27, Regulation V. 1831, and "should be disposed of by the Provincial Court in the same manner as would have "been the case if the provisions of that Regulation had not been extended to Zillah "Cawnpore."

As the case in question involves the construction to be put upon a Regulation, agreeably to the general orders of Government, it is forwarded to be laid before the Presidency Sudder Adawlut previous to the issue of the order.

The Presidency Court, on the 30th March, 1832, *concurred in this construction.*

March 7th, 1832.

Extract paragraph 3 *from a letter addressed to the Judge of Zillah Burdwan, dated the 7th March,* 1832, *in reply to his letter of the 20th February,* 1832.

No. 681.
1831.
Reg. V. Sec. 27, Cl. 1.

Para. 3. With reference to the concluding paragraph of your letter I am directed to inform you that judges of the Zillah and City Courts to which Regulation V. of 1831 has been extended should, after the period fixed for its operation, perform all the duties, with regard to the submission of appeals, &c. to this Court, heretofore performed by the Provincial Courts.

March 9th, 1832.

To the Judge of City Dacca, dated 16th March, 1832.

No. 682.
1800.
Reg. I.
1805.
Reg. VIII. Sec. 29, Cl 8 to 14.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your return of the 18th February to the Court's precept of 19th January last, and its enclosures, on the subject of the appointment of certain officers to manage the accounts of the estate of the certain wards of your Court.

2. The Court observing that the Regulations in force do not authorize the entertainment of the establishment in question, and being of opinion that it is unnecessary, deem it proper to annul your order of the 11th June last.

March 16th, 1832.

Resolution of the Court of Sudder Dewanny Adawlut at Calcutta, dated 16*th March*, 1832.

No. 683.
1825.
Reg. II, Sec. 3.

Two judges of the Sudder confirm the decree of a Provincial Court. The *same* two judges admit a review:—*one* of them leaves the Court; the *other* confirms the decision previously passed by the two. Under those circumstances the Court resolved that the second decision of the *remaining judge* is final, and that a second concurring voice is not necessary to render it so.

March 16*th*, 1832.

From the Commissioner of Circuit for the 19*th Division to the Register of the Presidency Court of Nizamut Adawlut, dated* 3*d March*, 1832.

No. 684.
1818.
Reg. XII.

I request you will obtain for my guidance the orders of the Court of Nizamut Adawlut on the enclosed case.

2. One Kashee Nund was convicted by the magistrate of Zillah Midnapore of having, under the assumed name of Gunganarrain Rai, fraudulently passed an unfinished and unsigned note of the India Bank, purporting to be for one hundred rupees, aad having thereby fraudulently obtained possession of cloths valuing rupees one hundred the property of Jowahir Misr. On the 6th June, 1831, the magistrate passed sentence on the prisoner to receive thirty rattans and to be imprisoned for two years and kept to hard labour.

3. The prisoner having appealed to the officiating commissioner, his case was called for on the 18th July, and on the 5th October the officiating commissioner confirms the sentence, but directs that security be demanded from the prisoner, and that on his failing to give it, the case be brought before the commissioner before the sessions. Subsequently Regulation VII. 1831 being enacted, the officiating commissioner sends the case to me.

4. My opinion is that the magistrate could not pass such a sentence for such an offence, which does not come under the provisions of Regulation XII. 1818; therefore that his order should have been rescinded, and that he should be directed to commit the prisoner for trial by the circuit judge. But it exceeds my power to order this after this confirmation by the officiating commissioner of the magistrate's proceedings; and yet the case has to come up before me with a view to carrying into effect the officiating commissioner's order respecting security: for the duties of the 8th and 9th Sections of Regulation VIII. 1818, do not appear to have been transferred to the sessions judges under Regulation VII. 1831.

To the Commissioner of Circuit for the 19*th Division, dated* 16*th March*, 1832.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 3d instant and its enclosures, and to inform you that under the circumstances stated in your letter the Court are of opinion that the sentence passed by the magistrate of Midnapore on the 16th June, 1831, on Kasheenath Nund, and the order of the late officiating commissioner dated the 5th October last confirming it and directing that security

should be required from the prisoner are illegal. They accordingly are pleased to annul the same, and direct that the prisoner be committed for trial before the sessions judge.

March 16*th*, 1832.

Extract of a letter from the Session Judge of Zillah Sarun to the Register of the Nizamut Adawlut, dated 23*d March*, 1832.

No. 685.
1823.
Reg. IV. Sec. 6.
1831.
Reg. VII. Sec. 13, C. 2.

Para. 2. Although Jeorackun Pasban, the prisoner in this case, was not actually committed by me in my capacity of magistrate of this district, he is, in a proceeding held by me, declared to be guilty of the offence with which he is charged, and on the grounds stated in that proceeding, I committed either three or four persons, at different times. Four I know have been tried, of whom two have been found guilty, and two acquitted. I therefore have postponed the present trial, reporting the above circumstance for orders of the Nizamut Adawlut; for as no evidence beyond identifying the prisoner as the person mentioned in my proceeding was taken by the magistrate who committed him, I should hardly feel myself justified in presiding at his trial. It is true, the strict letter of Section 6, Regulation IV. of 1823, may not be considered as precluding me, but as I apprehend that my doing so would be acting contrary to the spirit and intent of that enactment, I consider it the safest course to refer the case to the Court of Nizamut Adawlut for orders.

To the Session Judge of Zillah Sarun, dated 13*th April*, 1832.

I am directed by the Court to acknowledge the receipt of your letter of the 23d ultimo, and to inform you that the Court are of opinion, under the circumstances stated, that the trial of Jeorackun Pasban should be held by the commissioner of circuit on his return to the station of the district.

April 13*th*, 1832.

To the Session Judge of Sarun, dated 27*th April*, 1832.

No. 686.
1807.
Reg. IX. Sec. 20.

I am directed by the Court to acknowledge the receipt of your letter of the 29th ultimo and its several enclosures.

2. The Court observe that the assistant to a magistrate is not competent to make commitments to the Court of Circuit, unless he may have been appointed by Government to act as magistrate: consequently an assistant directed by the commissioner to take charge of the office at the sudder station during the absence of the magistrate in the interior cannot exercise that power. Under these circumstances therefore the Court deeming the commitment by the assistant of the prisoner Torrur Pasban on a charge of burglary and theft illegal, annul it, and direct that the proceedings be returned to the magistrate, in order that the latter may dispose of the case by commitment or otherwise as he may deem proper under the Regulations.

3. With reference to the question in the 5th paragraph of your letter, the Court observe, that the present case is analogous, as far as relates to the share taken by you in

the preliminary investigations, to that of Jeorackun, on which their opinion was communicated to you by my letter of the 13th instant. In the event therefore of the prisoner Torrur being recommitted by the magistrate, the Court are of opinion that the case should be tried by the commissioner, to whom a copy of this letter will be communicated for his information.

April 27th, 1832.

From the Judge of Zillah Backergunge to the Register to the Sudder Dewanny Adawlut, dated 27th March, 1832.

No. 687.

1814. Reg. XXVI. Sec. 6, Cl. 2, and Sec. 7. 1829. Reg. X. Sch. B. Art. 8, Par. 4.

During the investigation of suits in the civil court of this district I have observed that in former years it was a practice for people (suitors) in suing for such property as talook or ousut talook, or hawallah or ousut hawallah, to lay the amount of the suit at three times the jumma that these mofusil estates paid to the zemindar, but I believe that the amount of suit for the above kind of property should be reckoned by the produce of one year's assets from them, and not according to the revenue paid by them to the zemindars in whose estates the minor ones may be comprehended.

2. If the party suing had gone agreeably to the regulations, and laid the amount at the assets of one year, and had found, or it had been considered by me, that he had underrated them, in that case I suppose I have the power agreeably to Clause 3, Section 6, Regulation XXVI. 1814, to order a supplementary pleading to be filed to rectify what was wanting in the first; but in the instance I allude to in the former part of this letter, there is a total departure from the Regulation, and therefore I request to know whether in such cases supplementary pleadings are permitted. A man might be mistaken in regard to the annual assets of an estate; they may be more or less than he may have laid them at; but where the Regulation is plain, and he departs from it, is it left to my option to nonsuit, or not? The Court's opinion will oblige me; as I observe a number of appealed cases in this predicament, to nonsuit which in this late stage of the proceedings would prove of considerable detriment to the parties, as entailing on them increased law expences; and therefore I wish the instruction of the Court as to the mode of proceeding to be adopted.

To the Judge of Zillah Backergunge, dated 27th April, 1832.

In reply to your letter of the 27th ultimo, I am directed by the Court to refer you to the provisions of Section 7, Regulation XXVI. of 1814, as applicable to such suits of the description noticed by you as may have been instituted prior to the promulgation of Regulation X. 1829; and to observe that the rules contained in the 4th paragraph of the note on Article 8, Schedule B, of the last quoted Regulation, are applicable to those instituted subsequently to its promulgation.

April 27th, 1832.

At a Court of Sudder Dewanny Adawlut for the Western Provinces, held on the 27th April, 1832.

No. 688.
1831.
Reg. V. Sec. 28,
Reg. IX. Sec. 2, Cl. 2.

Resolved, that the powers vested in the Court of Sudder Dewanny Adawlut by Clause 2, Section 2, Regulation IX. 1831, on the receipt of a petition of appeal from the decision of an inferior Court can be exercised in those cases only in which an appeal is within the cognizance of the Court under the general regulations, and that consequently the Court cannot interfere on the receipt of petitions of appeal against the decision of a zillah or city judge passed by the latter in appeal from the decision of sudder ameens and moonsiffs : the decision of the zillah or city judge being in such cases declared final by Section 28, Regulation V. 1831.

The Court are further of opinion that the same construction applies to cases in which the decision of the zillah or city judge has been passed prior to the operation of Regulation V. 1831, in the district in which the cause of action originated as well as to those passed subsequently.

The Presidency Court, on the 18*th May,* 1832, *concurred in this construction.*

April 27*th,* 1832.

From the Commissioner of the 2*d Division to the Register of the Nizamut Adawlut Western Provinces, dated* 18*th April,* 1832.

No. 689.
1824.
Reg. XV.
1831.
Reg. V. Sec. 18, Cl. 6.

I have the honor, with reference to the 2d paragraph of your letter of the 20th ultimo, to submit a copy of a letter from the acting magistrate of Agra, explaining his reasons for employing the sudder ameens in the investigation of cases under Regulation XV. 1824, and to solicit the orders of the Court as to the authority of the magistrate on this point. The advantage of adopting Mr. Mansell's construction appears to me obvious, and I trust the Court will deem it legal.

From the Acting Magistrate of Agra to the Commissioner of the 2*d Division, dated* 12*th April,* 1832.

In reply to your letter of the 9th instant, calling for an explanation of the reference of certain cases under Regulation XV. 1824, to the sudder ameens of this Court, I beg to state for the information of the Nizamut Adawlut, that the cases in question were sent by me simply for investigation under the spirit of Clause 6, Section 18, Regulation V. 1831.

2. I hope that I may not have been deemed by the Nizamut Adawlut to have given too great a latitude to the spirit of the Clause. Should the letter of it in their view exclude all cases of dispossession, the magistrate will, I cannot but feel, be deprived of every legal power of associating his own honest superintendence with native ability and knowledge in sifting out the real merits of this the most difficult class of cases within the jurisdiction of the Criminal Court; at a time too when Government have been pleased to

authorize the inferior office of tuhseeldar being vested with the power of adjusting and reporting upon cases more important still to the community, summary suits of rent.

From the Register of the Nizamut Adawlut for the Western Provinces to the Register of the Presidency Court of Sudder Dewanny and Nizamut Adawlut, dated 27th April, 1832.

I am directed by the Court of Nizamut Adawlut for the Western Provinces to forward to you the enclosed copies of letters received from the commissioner of the 2d division and the magistrate of zillah Agra; from which has arisen a discussion of the legality of a reference to a sudder ameen for investigation of cases under Regulation XV. 1824, involving disputes for possession.

The Court are of opinion that under Clause 6, Section 18, Regulation V. 1831, which is adduced by the magistrate as his authority for making the reference, he is not empowered to adopt this course in the disposal of such cases; that Section being intended to refer to cases of a strictly criminal nature.

The Presidency Court, on the 18*th May,* 1832, *concurred in this construction.*

April 27*th,* 1832.

From the Judge of Zillah Rajshahye, dated 18*th April,* 1832.

No. 690.
C. O. 11th Sept. 1829.

On the 9th February, 1820, a decree was passed in this Court for the sum of rupees 7,444-10-6, awarding both principal and interest, besides costs of suit: but the amount of the decree was not realized until the month of March, 1832. The pleader of the plaintiff has now moved this Court to cause payment of interest to be made on the principal for the period intervening between the day of decision and the date of execution of the decree, and he founds his motion on the circular order of the Sudder Dewanny Adawlut dated the 11th September, 1829, (No. 10 of volume 2, Circular Order, Sudder Dewanny Adawlut), but as a question has arisen in my mind whether the order of the superior tribunal was intended to have a retrospective effect with respect to any decree, like the present for instance, which remained unexecuted subsequently to the promulgation of that order, I do myself the honor of soliciting the opinion of the judges on the point in doubt.

To the Judge of Zillah Rajshahye, dated 4*th May,* 1832.

In reply to your letter of the 18th ultimo I am directed by the Court to inform you that in the case stated by you, if the delay in the realization of the amount of the decree was not owing to the default of the decree holder, he is entitled to interest on the amount adjudged to him from the date of the decree until the said amount was paid into Court.

May 4*th,* 1832.

From the Civil and Session Judge of Etawa to the Register of the Sudder Dewanny Adawlut Western Provinces, dated 3d May, 1832.

No. 691.

1823.
Reg. IV. Sec. 6.
1831.
Reg. VII. Sec. 13, Cl. 2.
1817.
Reg. XVIII. Sec. 7.

By Clause 2, Section 13, Regulation VII. 1831, a session judge cannot try a case committed by himself in his capacity of magistrate, but it is not mentioned whether he can try cases committed in his capacity of civil judge, I therefore request you will solicit the opinion of the Court on this point.

You will also oblige me by ascertaining whether a civil judge can commit for trial a native officer on the charge of embezzling or making use of the public money ; or whether he must refer the case for investigation and eventual commitment to the magistrate.

From the Register of Western Provinces to the Judge of Zillah Mynpooree, dated 11th May, 1832.

I am directed by the Court of Nizamut Adawlut for the Western Provinces to acknowledge the receipt of your letter of the 3d instant.

2. In reply, I am desired to state that in the opinion of the Court a sessions judge is not competent to try a person committed for trial by himself in his capacity of civil judge.

3. The Court also direct me to inform you that although a summary enquiry into cases of embezzlement by ministerial native officers may be conducted by the judge under the provisions of Section 7, Regulation XVIII. 1817, that officer is by no enactment empowered to commit for trial before the commissioner of circuit for the offence : this duty being left to the magistrate, to whom the judge should transmit his proceedings, if grounds appear to exist for subjecting the accused to a criminal trial : the magistrate however in committing or releasing the person charged with the offence will act on his own judgment on a fair consideration of the evidence adduced.

The Presidency Court, on the 1st June, 1832, concurred in this construction.

May 11th, 1832.

To the Judge of Zillah Tirhoot, dated 18th May, 1832.

No. 692.

1831.
Reg. V. Secs. 5, 15, and 18.

In reply to your letter of the 30th ultimo, I am directed by the Court to inform you that sudder ameens and moonsiffs are not prohibited from trying suits in which other sudder ameens and moonsiffs or their dependants may be concerned.

May 18th, 1832.

To the Acting Secretary to the Sudder Board of Revenue, dated 18th May, 1832.

No. 693.

I am directed by the Court to acknowledge the receipt of your letter of the 1st instant and its enclosures, requesting that the Calcutta Provincial Court of Appeal may be instructed to forward to the Board certain original proceedings.

2. In reply, I am directed to inform you that the Court considering the reasons assigned by the Provincial Court for not sending their records out of their office satisfactory, do not think that any interference on their part can properly be afforded.

3. With reference however to the remark, that the Sudder Board have invariably directed their record keeper to attend at this Court, or the Provincial Court, with such papers as the Court might wish to inspect, the Court willingly acknowledge the assistance they have at all times received from the board on such occasions. At the same time they cannot admit the analogy between the case of a court of justice calling for the records of a public office, with a view to a just decision between the parties in suits pending before them, and that of a Board requiring the original records of a court of justice to be sent to it for the purpose mentioned in your letter (of preparing pleadings of appeal on the part of Government.)*

May 18*th*, 1832.

From the Magistrate of Zillah Purneah to the Register of the Calcutta Court of Nizamut Adawlut, dated 4*th May*, 1832.

No. 694.
1822.
Reg. VIII Sec. 3, Cl. 1.
1824.
Reg. XV.

I have the honor to request the permission of the Court of Nizamut Adawlut to try the above case under the provisions of Regulation XV. of 1824.

2. The case involves not only a boundary dispute between two landed proprietors, but there is also a doubt in which district, Purneah or Bhaugulpore, the lands are situated. The plaintiff states the former, the defendant the latter, and should the Bhaugulpore zemindar's statement prove to be correct, the proceedings held by me will be useless unless the sanction of the Court be first obtained to this application.

3. I am not aware of any Regulation applicable to the present case; but as the Court can, under Regulation VIII. of 1822, direct the trial of prisoners to be held in any district they think proper; perhaps it will not be considered in any way irregular, or illegal to extend their sanction to the request above made.

To the Magistrate of Zillah Purneah, dated 18*th May*, 1832.

I am directed by the Court to acknowledge the receipt of your letter of the 4th instant, and in reply to inform you, that provided the case of Shah Ahmud Reza versus Deonarain Singh, is one to which the provisions of Regulation XV. 1824 are applicable, the Court are of opinion that you should proceed in the investigation, in the course of which, should it appear that the lands are situated in zillah Bhaugulpore, you will refer the parties to the magistrate of that district, and certify to that officer the proceedings held by you in the case.

May 18*th*, 1832.

To the Dacca Provincial Court of Appeal, dated 25*th May*, 1832.

No. 695.
1819
Reg. VIII. Secs. 9, 16, and Cl. 4, Sec. 18.

I am directed by the Court to acknowledge the receipt of your letter of the 15th March last, and its enclosure, requesting to be informed whether a judge or register is

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* See Circular Order of the Sudder Dewanny Adawlut, dated 28th December, 1832, No. 75, Vol. 2.

competent to sell talooks under the provisions of Clause 4, Section 18, Regulation VIII. 1819, in satisfaction of summary decrees for balance of rent.

2. In reply, I am directed by the Court to observe that all talooks, in which the interest of the occupant is saleable, may be sold for an arrear of rent accruing thereon, and that the sale should be made by the register, or in his absence by the judge or magistrate *(now by the collector under Section* 16, *Regulation VII.* 1832*)* in the same manner as putnee and durputnee talooks, under the provisions of Sections 9 and 16 of Regulation VIII. 1819.

The Western Court, on the 4th May, 1832, *concurred in this construction.*

May 25th, 1832.

To the Judge of Zillah Burdwan, dated 25th May, 1832.

No. 696.
1831.
Reg. V. Sec. 5, Cl. 3.

With reference to the 2d paragraph of your letter of the 20th March last, and to your letter of the 2d instant, I am directed to observe that the question for consideration appears to be, whether a ryot sued for rent in a moonsiff's court can remove the suit to the collector's court, merely by affirming that the land for which the rent is demanded is not liable to rent. The Court are of opinion that he cannot. The point at issue is, not the validity of the alleged rent free tenure, but the fact of the ryot's having paid, or not paid rent for the year previous to that for which the suit is instituted. The moonsiff is competent to try and determine this point; and if it be proved by the village accounts duly authenticated, or other legal evidence, that the ryot did pay rent for the preceding year, to pass a decree for such amount of rent as may appear to be due, leaving the royt to establish his right to hold the land as lakeraj by a suit instituted under Section 30, Regulation II. 1819.

The Western Court, on the 6th July, 1832, *concurred in this construction.*

May 25th, 1832.

To the Commissioner of Circuit for the 15th Division, dated 1st June, 1832.

No. 697.
1821.
Reg. III. Sec. 5, Cl. 1.

In reply to your letter of the 18th ultimo, requesting the Court's opinion as to the propriety of admitting an appeal from the order of a magistrate after the expiration of the prescribed period, I am directed to refer you to the first Clause of Section 5, Regulation III. 1821, which authorizes the admission of an appeal from a magistrate's order after the expiration of one month from the date of it, if it be proved that the petitioner was prevented, by circumstances totally beyond his control, from presenting his petition within the prescribed period.

June 1st, 1832.

To the Commissioner of Circuit for the 15th Division, dated 8th June, 1832.

No. 698.
1793.
Reg. IV. Sec. 6.
1803.
Reg. III. Sec. 7.
Extended to Criminal Courts by Cl. 1, Sec. 2.
Reg. L. 1803.

In reply to your letter of the 24th ultimo, I am directed to inform you that the Court concur with you that the attachment by a magistrate of the lands of a non-attending witness, upon whom a subpœna has not been served, is illegal.

June 8th, 1832.

To the Dacca Provincial Court of Appeal.

No. 699.
1793. Reg. V. Sec. 13.
1803. Reg. IV. Sec. 13.

The Court having had before them your certificate of the 31st ultimo and its enclosures requesting to be informed, with reference to the orders passed by the Court in the case of Khutee Jan Bebee appellant versus Unwur Khan and others respondents, whether the translations of Bengallee papers into Persian in certain other cases are to be made at the expence of the appellants, or of Government; direct me to inform you that the translation in the case in question were made at the cost of the appellant at her special request; but that in the other cases alluded to they should be made by the mohurrirs of the Court, or by hired mohurrirs at the cost of Government if the regular establishment is insufficient to perform the duty with due despatch.

2. I am at the same time directed to refer you to the circular order of the 11th July, 1809, which directs that only those papers which are material to the issue of the case shall be translated.

June 29th, 1832.

From the Register of the Sudder Dewanny and Nizamut Adawlut at Calcutta to the Register of the Court for the Western Provinces, dated 6th July, 1832.

No. 700.
1831. Reg. VI.

I am directed by the Court to acknowledge the receipt of your letter of the 24th March last, and to inform you that the Court entirely concur with the judges of the Western Court, that they are authorized to receive an act upon periodical reports and other matters having reference to periods prior to the 1st January, 1832, which, on that date, were not before this Court. It has indeed been the practice of this Court to take up all matters which were pending before them on the 1st January last, and to return those subsequently received for submission to the Western Court.

July 6th, 1832.

To the Judge of Zillah Burdwan, dated 6th July, 1832.

No. 701.
1831. Reg. V.

I am directed by the Court to acknowledge the receipt of your letter of the 20th ultimo, requesting their opinion on certain points connected with Regulation V. 1831, and to communicate to you the following replies.

2. As Regulation V. 1831 does not authorize any alteration in the rules in force before its enactment, in regard to the issue of the processes of moonsiffs, their processes should be issued according to those rules. (See subsequent rules in Section 5, Regulation VII. 1832.)

3. When a defendant in a suit pending before one moonsiff resides in the division of another, the Court are of opinion that it would be sufficient to have the process backed by the moonsiff in whose division the defendant resides.

1814. Reg. XXIII. Secs. 23, 31 and 42.

4. In cases of resistance of the process of a moonsiff, the Court are of opinion that he should report the case for the orders of the judge, as required in the instances provided for by Sections 23, 31 and 42 of Regulation XXIII. 1814.

5. In cases of execution of moonsiff's decrees, in which the defendant might reside, or the property to be attached, in execution be situated, in the division of a different moonsiff from the one who passed the decree, the judge would, of course, refer the execution to the former.

6. The Court consider the rules contained in Section 11 of the Regulation in question to authorize the employment of moonsiffs in giving possession, in execution of their own decrees, of all property not being land paying revenue to Government, but are of opinion that under Section 51, Regulation XXIII. 1814, they are still competent, with the authority of the judge, to give possession of lands paying revenue to Government in execution of any decrees which may not have been passed by the moonsiffs themselves. (See subsequent rules in Section 7, Regulation VII. 1832.)

7. The rules contained in Section 29, Regulation XXIII. 1814, seem to provide sufficiently for the service of processes by pauper, as well as by other plaintiffs.

8. In the event of a vacancy in the office of moonsiff, the recommendation of the successor should be made under paragraph 8 of the resolutions of Government dated 1st November, 1831, through the commissioner of revenue and circuit of the division.

9. All applications for the erection and repair of moonsiffs' cutcherries and other similar contingencies should be made direct to Government.

The Western Court, on the 17th August and 26th October, 1832, concurred in these constructions.

July 6th, 1832.

From the Judge of Zillah Burdwan, dated 20th June, 1832.

No. 702.
1829.
Reg. X. Sch. B. Art. 8.

In the note to Article 8 of Schedule B, in Regulation X. 1829, it is provided, that in suits for houses, and other things of value, real or personal, not being for land paying revenue to Government, forming an entire mehaul or specific portion of it with a defined jumma, nor rent free land, the amount is to be computed at the estimated selling price. Supposing, then, an ijarehdar to sue for possession of a certain quantity of land, being neither rent free, nor an entire mehaul paying revenue to Government, nor a specific portion of one with a defined jumma; ijarehs not being saleable, how is the plaintiff to compute the value of the land for which he sues?

2. In case also of a ryot taking a pottah of a few beegahs of lakheraj land, and suing the proprietor of the land for possession of the same, how is the amount of the suit to be fixed; a tenure of this nature not being transferable, and therefore having no market price?

3. In many districts the right of a khoodkasht ryot of mal land is not considered transferable, and cannot be sold: under which circumstances, supposing the ryot to institute a regular suit for possession against the proprietor of the land, how is he to estimate the value of his right?

4. In the case of putnee talooks the price in general may be fixed without much difficulty; but it seems hard that a talookdar of this description should be obliged to sue at a greater expence than the proprietor of an estate paying revenue, direct to Government.

To the Judge of Zillah Burdwan, dated 6th July, 1832.

I am directed by the Court to acknowledge the receipt of your letter of the 20th ultimo, regarding the construction of Section 8 of Schedule B, Regulation X. of 1829.

2. In reply, I am directed to observe that though the land included in an ijareh, or in the jote of a cultivating ryot, is not transferable by sale, the interest of the party claiming the ijareh or jote is capable of being valued; and that in the cases supposed by you, the plaintiff should be allowed to lay his suit at the amount which he may consider the value of his interest in the thing claimed; to which if the defendant make objection, the Court would decide thereon after making the summary enquiry directed by Section 4, Regulation XIII. of 1808.

The Western Court, on the 27th July, 1832, *concurred in this construction.*

July 6th, 1832.

From the Acting Magistrate of Furruckabad to the Register of the Nizamut Adawlut Western Provinces, dated 29th May, 1832.

No. 703.
1809.
Reg. V.
1813.
Reg. VIII.
1829.
Reg. VIII.

I have the honor to enclose a copy of a letter addressed by me to the Secretary to the Governor General Judicial Department, by whom I was directed to refer the matter for the consideration and orders of the Court of Nizamut Adawlut in the Western Provinces. I request the favor of receiving the orders of the Court on the case in question.

From the Acting Magistrate of Furruckabad to the Secretary to the Governor General of India, Judicial Department, dated 15th May, 1832.

By direction of the officiating commissioner of the Furruckabad or 3d division, I have the honor to request the orders of the Right Honorable the Governor General in the following case.

2. A noted dukyt who had made his escape, Lekwa by name, from the jail of this zillah, was apprehended by some of our police some time back, in the Lucknow territory. With him, at the time of his apprehension were several others, who assisted him in resisting the police; and some of the latter were wounded. Of Lekwa's companions some escaped, one was killed, and one Shibloll, or Sheololl, was taken. It is proposed to commit him for trial, but some doubts having arisen as to whether Sheololl comes under the definition of native subject as specified by 1813, Regulation VIII., Section 2, Class second, by reason of his having quitted our territory and resided in that of Lucknow for the last eight or nine years, it is thought proper to make a previous reference.

From the Register of the Western Provinces to the Register of the Presidency Court, dated 8th June, 1832.

I am directed by the Court of Nizamut Adawlut for the Western Provinces to transmit, for the consideration of the Presidency Court, the enclosed copy of a letter received from the magistrate of Furruckabad under date the 29th ultimo, with its enclosures.

2. The Court are of opinion that the prisoner Sheololl is a native subject of the British Government under Class No. 2, Regulation VIII. 1813, and as such liable under

the provisions of Regulation VIII. 1829, to be tried by the Honorable Company's Courts for the offence of assisting Lekwa in resisting the police in the territories subject to the King of Oude.

3. Previous to issuing orders the Court will await the reply of the Presidency Court.

To the Register of the Nizamut Adawlut, Western Provinces, dated 6th July, 1832.

I am directed by the Court to acknowledge the receipt of your letter of the 8th ultimo, and its enclosures, and in reply to inform you that the Court, concluding Sheololl to have been born in Seharunpore, concur with the Western Court in considering him a native subject of the second class described in Regulation VIII. 1813.

July 6th, 1832.

To the Session Judge of Zillah Cuttack, dated 13th July, 1832.

No. 704.
1801.
Reg. III.
C. O. N. A. 5th Dec. 1828.

I am directed by the Court to acknowledge the receipt of your letter of the 29th ultimo, the proceedings on the commitment of Modhoo Sahoo and others, for forgery; and in reply to inform you that the Court have been pleased to annul the commitment of the prisoners, on the ground that in the case in question the magistrate had no authority to originate a prosecution for forgery. It belonging to the Civil Court, before whom the forged document was produced (or, in the present instance, to the civil judge on a representation from the moonsiff,) to make the requisite enquiry, and commit the persons implicated in the transaction, if sufficient ground appeared for such a measure.

July 13th, 1832.

To the Judge of Zillah Mymensingh, dated 20th July, 1832.

No. 705.
1793.
Reg. III Secs. 7 & 19.
1803.
Reg. II. Secs. 9 & 20.

I am directed by the Court to acknowledge the receipt of your letter of the 4th instant, and of the Persian proceedings that accompanied it, which are herewith returned.

2. In reply to your first question the Court are of opinion that there can be no objection to a judge pointing out officially to a party in a suit the proper mode to be followed by him when he sees occasion to do so. This answer renders a reply to your second question unnecessary.

3. Presuming from the third question that you ask whether the judge, on the application of A, a plaintiff, can summarily direct the collector to proceed in the sale of the estate of B, the defendant, against whom C had in the interim collusively obtained a decree for the same estate; the Court are of opinion that he cannot; but that should the decree in favor of C be proved in a regular suit instituted by A against B and C to be collusive, the estate of B will be liable to sale in satisfaction of A's decree.

July 20th, 1832.

From the Judge of Zillah Etawah to the Register of the Western Provinces, dated 26th May, 1832.

No. 706.
1831.
Reg. V Sec. 6, Cl. 4.
1829
Reg. X. Sch B. Art.8.
1793.
Reg. III Sec. 13.
1803.
Reg. II. Sec. 19.

I request you will ascertain from the Court of Sudder Dewanny Adawlut at Allahabad whether persons preferring claims to property sued for under the provisions of Clause 4, Section 6, Regulation V. 1831, are to present their petitions on plain or stamped paper? and if the latter, is the amount to be agreeable to the rates specified in the Schedule B, referred to in Section 17, Regulation X. 1829?

2. Also whether the rules for the guidance of moonsiffs in the above Clause relative to cases of succession to real property, are applicable to causes in the courts of zillah judges and sudder aumeens? Section 19, Regulation II. 1803, (corresponding with Section 13, Regulation III. 1793,) does not make it incumbent on the Courts to issue a notification for the attendance of claimants, although I observe, from the select causes decided by the Sudder Dewanny Adawlut at Fort William, that this mode of proceeding in several instances has been adopted by that authority.

Proposed letter from the Register of Western Provinces to the Judge of Zillah Mynpooree, dated 8th June, 1832.

I am directed by the Court of Sudder Dewanny Adawlut for the Western Provinces to acknowledge the receipt of your letter of the 26th ultimo, containing two queries relative to the construction to be put on Clause 4, Section 6, Regulation V. 1831.

2. In reply to your 1st paragraph, I am directed to inform you that the claimants of property under the provisions of the Clause above cited, should present their petitions on stamped paper, the amount of which will be regulated by the rules contained in Schedule B, Regulation X. 1829; no other rules relative to amount of stamps being now in existence.

3. In reply to your 2d paragraph the Court remark that the rules contained in the same Clause, regarding cases of succession to real property, are intended exclusively for the guidance of moonsiffs, such being the express tenor of the enactment; the course to be pursued in such cases by zillah and city courts remaining precisely as it stood previous to the enactment of Regulation V. 1831.

To the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 20th July, 1832.

I am directed by the Court to acknowledge the receipt of your letter of the 8th ultimo, and its enclosures, relating to two questions on the construction of Clause 4, Section 6, Regulation V. 1831.

2. In reply, I am directed to inform you that the Court concur in the reply proposed to be given to the second question. On the subject of the first, they are of opinion that a petition, putting in a claim to a share of the property sued for in consequence of a notice issued under Clause 4, Section 6, Regulation V. 1831, should be considered as an application "in relation to matters pending" before the Court, and that, with reference to the

omission of the moonsiffs in Article 7, Schedule B, Regulation X. 1829, and to the provisions of Clause 2, Section 9, Regulation V. 1831, such application in the Courts of the moonsiffs should not be written on stamp paper.

The Western Court, on reconsideration of the subject, concurred on the 17th August, 1832, in this construction.

July 20th, 1832.

To the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 27th July, 1832.

No. 707.
1793.
Reg. XXXIX.
1803.
Reg. XLVI.

I am directed by the Court to acknowledge the receipt of your letter of the 8th ultimo, requesting to be furnished with copies of any orders regarding the legality of the appointment of deputies to assist the city and pergunnah kazees, or determining the extent to which the assistance of deputies, if legally appointed, is available.

2. In reply, I am directed to transmit to you the accompanying copies of a letter from the acting judge of zillah Shahabad dated 10th December, 1817, requesting to be informed if the duty of kazee can be performed by proxy; of the Court's reply, under date 2d April, 1818, forwarding copy and translation of a futwa of the law officers of the Court, in which it is stated that a kazee cannot, without the express permission of the hakim or ruling power, legally appoint a deputy; and of a letter addressed to the judge of Shahabad on the 6th April, 1824, in the 3d paragraph of which a "deputy kazee" is stated to be "an officer not acknowledged or mentioned throughout the Regulation quoted," (Regulation XXXIX. 1793.)

July 27th, 1832.

From the Commissioner of Circuit 5th Division to the Register of the Western Provinces, dated 18th July, 1832.

No. 708.
1832.
Reg. II. Sec. 2, Cl. 2.

I have the honor to forward for the consideration and orders of the Court of Nizamut Adawlut a copy of a letter to my address from the magistrate of Bareilly, together with a copy of my reply thereto, on the subject of an order issued by him to the thanadars for taking the declarations of individuals preferring of themselves at the thanah charges of burglary and theft.

2. As I have nothing to offer in addition to what I have stated in my letter to the magistrate, I await the orders of the Nizamut Adawlut on the present reference.

From the Magistrate of Zillah Bareilly to the Commissioner of Circuit of the 5th Division, dated 12th July, 1832.

In Regulation II. of 1832, it is prescribed that thanadars shall not proceed or send officers to make enquiries into an alleged theft or burglary case, unless the plaintiff present a petition on plain paper complaining of the theft or burglary.

2. Some cases have already come before me wherein a complaint was made to the thanadar of such theft and burglary, and the thanadars refused to interfere, and perhaps

without clearly informing the plaintiff that he should write a petition; for the enactment having greatly abridged the productive powers of the police officers, it seems natural to suppose that they would endeavour to shew up the law as an injurious one.

3. As the intent of the law clearly is to prevent police officers creating cases of this nature for their own benefit, and to prevent individuals from falsely charging others without coming forward themselves, and not to throw difficulties in the way of persons really suffering who wish to bring forward their cases, I have directed the thanadars to take the evidence of all persons coming forward *themselves*, and to proceed to investigate the case. So many of the population are unable to read and write that the limitation of enquiry to cases in which a written petition may be delivered is, I think, beyond the intent of the law, which was only to put a stop to the abuses that were largely practised.

From the Commissioner of Circuit of the 5th Division to the Magistrate of Bareilly, dated 17th July, 1832.

In reply to your letter of the 12th instant, informing me of the order issued by you to the thanadars in your jurisdiction instructing them to take the declarations of persons stating themselves to have suffered from an act of burglary and theft committed on their own property, I beg to observe that the proceedings adopted by you, being an amendment of the rules laid down for the guidance of the police in Clause 2, Section 2, Regulation II. 1832, I doubt of its propriety as being a deviation from the strict letter of the law, and which it is only competent to the superior tribunal to sanction.

2. From the imperfect state of information in which the greater proportion of the public may be supposed to be as to the intention of the Regulation in question, I am inclined to think the order issued by you to the thanadars in your jurisdiction would be otherwise unobjectionable, but as the object of the Regulation becomes more generally known and understood, the enforcing the applications as required to be made to the thanadars on unstamped paper would, I conceive, be attended with little or no inconvenience to the public.

From the Register of Western Court of Nizamut Adawlut to the Register of the Presidency Court, dated 27th July, 1832.

I am directed by the Court of Nizamut Adawlut for the Western Provinces to transmit for the perusal of the Presidency Court the annexed copy of a letter with enclosures received from the commissioner of circuit 5th division under date 18th instant.

2. Under the terms of Clause 2, Section 2, Regulation II. 1832, the Court apprehend that no charges of burglary or theft unattended with personal violence, can be received or acted upon by the officers of police, unless the individual injured, however poor or illiterate he may be, present a written petition; and it is also expressly required by the above law that this petition shall contain not only a statement of the fact, but also a specific request either that search may be made for the stolen property, or that the offenders be apprehended and brought to punishment. It cannot be doubted that the expense of getting the petition written will prevent many of the poorer classes from preferring

charges, and that the delay attending it as well as the necessity of the sufferer presenting it himself will operate powerfully towards encreasing the difficulty already experienced in the apprehension of known offenders.

3. As the law however stands the Court are of opinion that the commissioner rightly interpreted it in his letter to the magistrate of Bareilly under date the 17th instant, and that the latter officer exceeded the limit therein laid down in his directions to his thanadars.

The Calcutta Court, on the 24th August, 1832, *concurred in this construction.*

July 27th, 1832.

To the Judge of Zillah Shahabad, dated 27th July, 1832.

No. 709.
1798.
Reg. II. Sec. 18.
1803
Reg. V. Sec. 10, Cl. 7.
C. O. S. D. A. 18th May, 1832.

In reply to your letter of the 9th instant, requesting to be informed whether, with reference to the Court's circular of the 18th May, 1832, (No. 47, volume 2, Sudder Dewanny Adawlut Circulars), the security required in cases of appeal under Section 10, Regulation II. 1798, is to be taken and its validity ascertained without orders from the Court, I am directed to inform you that the Court are of opinion that the security need not be demanded until the appellate Court have determined to call upon the respondent to file an answer to the petition of appeal.

July 27th, 1832.

From the Register of the Western Provinces, dated 10th August, 1832.

No. 710.
1829.
Reg. X. Sch. B. Art. 1.

I am directed by the Court of Nizamut Adawlut for the Western Provinces to acknowledge the receipt of your letter of the 2d instant, with its enclosures on the subject of security bonds taken by police officers under the Regulations.

2. In reply, I am directed to inform you that the Court are of opinion, that such documents should be drawn out on unstamped paper.

The Calcutta Court, on the 14th September, 1832, *concurred in this construction.*

August 10th, 1832.

From the Judge of Zillah Goruckpore, dated 15th August, 1832.

No. 711.
1831.
Reg. IX. Sec. 7.

I request you will have the goodness to ascertain for me the opinion of the Court of Sudder Dewanny Adawlut Western Provinces, whether the provisions of Section 7, Regulation IX. 1831, extend to the zillah courts; or whether the Regulation, as stated in the title, (the preamble leaves it doubtful), has reference to the Courts of Sudder Dewanny and Nizamut Adawlut only.

To the Judge of Zillah Goruckpore, dated 24th August, 1832.

I am directed by the Court of Sudder Dewanny Adawlut for the Western Provinces to acknowledge the receipt of your letter of the 15th instant, regarding the construction of Section 7, Regulation IX. 1831.

2. In reply, I am desired to inform you that the provisions of that Section are general, and have reference to the zillah and city courts as well as to the Court of Sudder Dewanny Adawlut.

The Calcutta Court, on the 21st September, 1832, *concurred in this construction.*

August 24th, 1832.

Extract from a Letter of the Magistrate of Zillah Bareilly, under date the 9th August, 1832, *to the Commissioner of Circuit 5th Division, submitted with that Officer's Letter, dated the 14th August,* 1832.

No. 712.
1816.
Reg. XIV. Sec. 9.

I have the honor to acknowledge the receipt of your letter of this date, and to inform you that I considered Section 9, Regulation XIV. 1816, to sanction the punishment of labour with imprisonment of burkundazes guilty of gross neglect of duty; whether rightly or not, I do not know, for the express order for it is not contained in the Section in question; but as the corporal punishment of rattans is allowed, I conclude the other as matter of course is.

3. It is only just now that I have found that Regulation VIII. 1803, prescribes (among a mass of other miscellaneous matter) in Section 23, that guards in charge of convicts who may have escaped, if it appear that they were guilty of any connivance, should be committed to the Court of Circuit, that they may receive the punishment which the law directs; what punishment this is I cannot find.

4. This Regulation, being printed in the edition of the Regulations published at the Baptist Press under the head Nizamut Adawlut, escaped my notice in my former enquiries on this subject.

7. On the latter head I find that the Regulation has previously been here understood in the same light I have done as sanctioning labour with the imprisonment. I find (December, 1824,) Hosein Khan burkundaz for conniving at the escape of Abdoolwahib under investigation, sentenced by Mr. Dick, the magistrate, to four months' imprisonment with hard labour and irons. I cannot immediately quote other cases, but am told that the practice was usual.

Extract of a Letter from the Register of the Western Provinces to the Register of the Presidency Court, dated 24th August, 1832.

The Court are of opinion that the magistrate is not authorized under Regulation XIV. 1816, or any other enactment, to sentence to hard labour a burkundaz found guilty merely of neglect of duty.

The Calcutta Court, on the 21st September, 1832, *concurred in this construction.*

August 24th, 1832.

To the Commissioner of Revenue for the 10th Division, dated 24th August, 1832.

No. 713.
1819.
Reg. VI.
1831.
Reg. VIII.

I am directed by the Court to acknowledge the receipt of your letter of the 8th instant, requesting the Court's opinion whether a summary suit brought by the farmer of a ferry against the kutkeenadar for rent, is cognizable by a collector under Regulation VIII. 1831.

2. In reply, I am directed to communicate to you the opinion of the Court, that a person holding the farm of a public ferry under Regulation VI. 1819, is not authorized to underlet it without the sanction of the magistrate; and that the provisions of Regulation VIII. 1831, do not apply to arrears of rent in such cases, the mode of proceeding in which is expressly provided for by Section 10, Regulation VI. 1819.*

August 24th, 1832.

To the Judge of Zillah Beerbhoom, dated 31st August, 1832.

No. 714.
1831.
Reg. V.
Reg. VIII. Secs. 8 and 11.

I am directed by the Court to acknowledge the receipt of your letter of the 13th instant, submitting certain queries connected with the demand and exaction of rent, &c. as affected by Regulations V. and VIII. 1831.

2. In reply to your first and second questions I am directed to inform you, that the cases therein alluded to, if connected with arrears or exaction of rent, are cognizable as summary suits by the collector under the provisions of Regulation VIII. 1831, and (except where summarily tried by the collector,) as regular suits by the moonsiffs on stamp paper of a quarter the full value, if within the amount cognizable by those officers, under Sections 8 and 11 of that Regulation.

3. In reply to your third question the Court direct me to state that they consider the above rules applicable both to ryots and under-tenants resisting undue demands, and to zumeendars and others claiming their just dues.

1814.
Reg. XXIII. Secs. 52 and 51.

4. On the fourth question the Court observe that the moonsiff or other competent officer, called upon to sell property attached for rent, is entitled to be reimbursed the expenses actually and necessarily incurred by him, though no sale should take place; and that in the event of such expenses not being paid, he is authorized to realize them by the sale of such part of the attached property as may be necessary for the purpose.

The Western Court, on the 5th October, 1832, *concurred in this construction.*

August 31st, 1832.

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* The Western Court, on the 28th September, 1832, concurred in this construction, in so far as that disputes regarding the rent of public ferries, are cognizable only by the magistrate, but observed that the Regulation cited does not appear to contemplate the underletting of public ferries, either with or without the magistrate's sanction.

Extract of a Letter from the Judge of Zillah Mympooree, under date the 15th ultimo.

No. 715.
1796.
Reg. XIII. Sec. 3.
1803.
Reg. IV. Sec. 35.

Para. 2. I also request you will ascertain whether the Court see any objection to my awarding to plaintiffs interest on costs, when they are not discharged by the defendants within a reasonable time.

Extract of a Letter from the Register of the Western Provinces to the Register of the Presidency Court, dated the 7th September, 1832.

Para. 2. The Court are of opinion that when the costs of suit are included in the decree, they become part of the matter awarded by the Court passing the decree, and as such are liable with other property so adjudged, to interest from the date of the Court's decision.

The Calcutta Court, on the 5th October, 1832, *concurred in this construction.*

September 7th, 1832.

To the Judge of Zillah Tirhoot, dated 21st September, 1832.

No. 716.
1793.
Reg. III. Sec. 21.
1803.
Reg. II. Sec. 17.

I am directed by the Court to acknowledge the receipt of your letter of the 8th instant, requesting their opinion as to the power of civil courts in regard to bankruptcy, and to inform you in reply that as the Regulations do not contain any specific provisions on the subject, you should exercise the discretion vested in you by Section 21, Regulation III. 1793, in any case that may come before you, leaving the party dissatisfied with your orders to appeal therefrom to this Court.

September 21st, 1832.

To the Judge of Zillah Midnapore, dated 21st September, 1832.

No. 717.
1812.
Reg. V. Sec. 26.

I am directed by the Court to acknowledge the receipt of your letter of the 8th instant, and in reply to inform you that you are competent, under the provisions of Section 26, Regulation V. 1812, to attach the whole (but not a portion of a joint undivided estate) on sufficient cause being shewn ; but that your decision as to the sufficiency of the cause is open to appeal.

September 21st, 1832.

To the Deputy Secretary to Government in the Judicial Department, dated 21st September, 1832.

No. 718.

An application having been made to the Court by Mr. R. Smith, reporter on the part of the Hurkaru newspaper, for copies of the minutes of the judges on the question of trial by jury in the Mofussil Courts (submitted to Government on the 20th of November, 1829), I am directed to ascertain whether there be any objection to a compliance with the request, and to beg the favor of your obtaining and communicating to the Court the pleasure of the Honorable the Vice President in Council on the subject.

2. I am desired to add that minutes of the judges furnished on requisition from Government, similar to that now adverted to, are not considered by the Court as public documents; and that consequently they do not deem themselves authorized to grant copies of them without such reference as they now take the liberty of making.

From the Officiating Secretary to Government to the Register of the Presidency Court of Sudder Dewanny and Nizamut Adawlut, dated 23d October, 1832.

I am directed to acknowledge the receipt of your letter dated the 21st ultimo, and in reply to request you will inform the Courts that the Honorable the Vice President in Council entirely concurs in their opinion that documents of the nature of those referred to in your letter should not be considered as public. Copies of them should not therefore be granted to private individuals on their application.

September 21*st*, 1832.

To the Judge of Zillah Midnapore, dated 21*st September*, 1832.

No. 719.
1831.
Reg. V. Sec. 5, Cl. 3.

I am directed by the Court to acknowledge the receipt of your letter of the 10th instant, and in reply to inform you, that the Court are of opinion that the word "property" in Clause 3, Section 5, Regulation V. 1831, means the "proprietory right" in, and not the "rent" of land exempt from the payment of revenue; and that suits for the rent of such lands are cognizable by moonsiffs, where that point alone is in question.

The Western Court, on the 26*th October*, 1832, *concurred in this construction.*

September 21*st*, 1832.

To the Judge of Mynpooree, dated 21*st September*, 1832.

No. 720.
1800.
Reg. I.
1805.
Reg. VIII. Sec 29, Cl. 8 to 14.

I am directed by the Court of Sudder Dewanny Adawlut for the Western Provinces to acknowledge the receipt of your letter of the 27th ultimo, correcting an error noticed in your former letter of the 26th July.

2. In reply to your reference I am directed to state that the civil courts are not expected to call on guardians appointed by them under Regulation VIII. 1805, to deliver up their accounts for their inspection; nor are those courts competent to exercise any active interference in the management of the property belonging to the ward. On the receipt however of credible information against the character of the guardian, showing him to the Court's satisfaction to be unfit for the situation, the Court is competent to make enquiry into the matter and to take measures for his removal.

3. For the recovery of any monies or property, which on investigation the guardian may appear to have embezzled, the civil court is not empowered to interfere excepting on the institution of a regular suit.

The Calcutta Court, on the 28*th December*, 1832, *concurred in this construction.*

September 21*st*, 1832.

From the Judge of City Moorshedabad, dated 18th September, 1832.

No. 721.
1793. Reg. III. Sec. 17. 1803. Reg. II. Sec. 12. 1806. Reg. II. Sec. 2. 53 Geo. III. Cap. 155, Sec. 113.

I request the instructions of the Sudder Dewanny Adawlut on the following questions.

Case.—A person sues A, B and C, natives of Bengal, in the court of the zillah judge within whose jurisdiction in Bengal the cause of action arose. A and B are resident within the limits of the jurisdiction of the district court in which the action is brought. C is resident within the town of Calcutta, having no agent of any kind.

Question 1st. Is such suit against A, B and C cognizable by the zillah court?

Question 2nd. If it is cognizable by the zillah court, through what channel, and in what mode is the notice prescribed by Section 2, Clause 3, Regulation II. 1806, to be served on C, to call on him to defend the cause? and, in the event of inability to serve the notice, how is the proclamation to be made which is prescribed for such cases?

2. I am induced to put the first of these two questions on a consideration of a reply from the register of the Sudder Dewanny Adawlut, dated 18th July, 1828, to a question put by Mr. D. Dale, judge of this court, in a letter to the register of the Sudder Dewanny Adawlut, dated 7th July, 1828, as to the method of putting the provisions of Section 7, Regulation IX. 1819, in practice; and because a petition of plaint has been presented to me in court in which a defendant is in the situation of C in the supposed case.

3. If a suit be cognizable in the zillah, I presume that the court having cognizance of the suit must have some known legal method of executing the process, which by the laws it is required to issue in pursuing the enquiry, though for such cases I can find no rule in the regulations. I never met with a cause before involving the questions now put, but the frequent occurrence of such a case is by no means improbable, and if it is cognizable by the zillah courts, as included in these noticed in Clause 3, Section 2, Regulation II. of 1806, some well defined rules of practice seem so necessary to prevent unpleasant collision with other authorities, that I imagine some rules must exist though I am unfortunately ignorant of them. Section 113 of 53 of Geo. III. Cap. 155 would I suppose be sufficient to meet any case where arrest in Calcutta may be necessary, but does not apply either to the execution of notices, summons, proclamation or subpœna.

To the Judge of City Moorshedabad, dated 5th October, 1832.

I am directed by the Court to acknowledge the receipt of your letter of the 18th ultimo, submitting two questions for the orders of the Sudder Dewanny Adawlut.

2. In reply to the first I am directed to state that the suit therein referred to is cognizable by the zillah court.

3. In reply to the second, that the notice or proclamation should be forwarded through a peon to the register of this court, who will cause it to be served by the nazir of the court, in conjunction with the peon by whom it is delivered. The inability of the court to issue process in the town of Calcutta, noticed in the Court's letter of the 18th July, 1828, to a former judge of your court, extends only to compulsory process,

(as arrest of the person, realization of money decreed, &c.) and not to process issued for the information of the party, which it is the practice of the court to issue. The zillah judge should decide the case ex-parte, if the defendant do not appear, and in the event of a decree being passed against him, should execute it on any property belonging to him which may be found beyond the limits of the town of Calcutta, and if ignorance of the institution of the suit should then be pleaded by the defendant, a review of the judgment might, on proof of the plea, be granted.

The Western Court, on the 9th November, 1832, *concurred in this construction.*

October 5th, 1832.

To the Register of the Nizamut Adawlut for the Western Provinces, dated 12th October, 1832.

No. 722.
1807.
Reg. IX. Sec. 21.

I am directed by the Court to acknowledge the receipt of your letter of the 2d August last, and its enclosures, requesting to be informed whether any construction has been adopted by the Presidency Court, regarding the power of a magistrate to revise and modify the proceedings of his assistants without an appeal having been preferred therefrom.

2. In reply, I am directed to forward to you the accompanying copies of a letter from the Moorshedabad court of circuit, dated the 4th November, 1826, and of the Court's reply, dated the 10th of the same month, (see Construction, No. 437, of volume I.) and to refer to the Court's letter of the 29th November, 1822, quoted in the printed report of the case of Himmut and Hergopal (pages 224 and 225, volume II. Nizamut Reports); and to state the opinion of the Presidency Court, that a magistrate is authorized, under the general power vested in him by the regulations as a superintending authority over his assistant, to revise the proceedings of the latter without an appeal, in like manner as the provincial courts of circuit were, by the construction of the 10th November, 1826, declared competent to revise those of the magistrate.

October 12th, 1832.

From the Judge of Zillah Dacca, dated 14th September, 1832.

No. 723.
1814.
Reg. XXVI. Sec. 3, Cl. 9 and 10.

I have the honor to submit for the consideration and final orders of the Superior Court the accompanying proceedings, and request their opinion as to whether a final order rejecting the petition on a summary appeal under Clauses 9 and 10, Section 3 of Regulation XXVI. 1814, a regular appeal can be afterwards instituted.

To the Dacca Provincial Court of Appeal, dated 19th October, 1832.

I am directed by the Court to acknowledge the receipt of your letter of the 14th ultimo and its enclosure, and in reply to inform you, that the rejection of a summary

appeal is not a bar to the admission of a regular appeal, provided the latter be otherwise admissible under the regulations in force.

October 19*th*, 1832.

To the Commissioner of Circuit for the 13*th Division, dated* 26*th October*, 1832.

No. 724.
1824
Reg. XV.

I am directed by the Court to acknowledge the receipt of your letter of the 11th instant, requesting the opinion of the Court as to the competency of a magistrate to determine boundaries under Regulation XV. 1824.

2. In reply, I am directed to observe that paragraph 7 of the circular order of the 17th December, 1830, expressly authorizes the practice. Indeed a dispute regarding possession of land of which the extent is contested cannot be determined without fixing *pro tempore* the bouudaries of it. The magistrate will of course merely define the boundary of that which was in the possession of the party ousted before the dispute arose, leaving the question of right to be determined by the civil court.

October 26*th*, 1832.

To the Commissioner of Circuit for the 19*th Division, dated* 26*th October*, 1832.

No. 725.
1793.
Reg. IX. Sec. 4.
1803.
Reg. VI. Sec. 4.

I am directed by the Court to acknowledge the receipt of your letter of the 16th instant, and its enclosures, and in reply to inform you that the Court concur with you in opinion that the magistrate of Cuttack acted properly in refusing to interpose his authority to compel the delivery of a betrothed woman to the petitioner in the case alluded to.

October 26*th*, 1832.

Extract of a Letter from the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny and Nizamut Adawlut, dated 21*st September*, 1832.

No. 726.
Evidence of Lepers as witnesses in Courts of Justice.

Para. 2. Previous to passing order on the same the Court are desirous of learning whether any rule has already been issued by the Presidency Court with regard to the matter referred; viz., the propriety of taking the deposition of lepers on oath, the Court request that with the sanction of the Presidency Court you will state for their information whether the records of your office contain any such order.

To the Judge and Magistrate of Zillah Etawah, dated 24*th September*, 1830.

In reply to your letter of the 27th ultimo, I am directed by the Courts of Sudder Dewanny and Nizamut Adawlut to inform you that the fact of a witness being afflicted with leprosy does not bar the admission of his evidence in our courts of justice.

From the Register of the Presidency Court of Sudder Dewanny and Nizamut Adawlut to the Register of the Western Court, under date the 26*th October*, 1832.

I am directed by the Court to acknowledge the receipt of your letter of the 21st ultimo and its enclosures, from the commissioner of circuit of the 7th division, and in

reply to forward to you the accompanying copy of a letter addressed to the judge of Etawah on the 24th September, 1830, informing him that the fact of a witness being affected with leprosy does not bar the admission of his evidence in our courts of justice.

October 26th, 1832.

To the Register of the Nizamut Adawlut for the Western Provinces, dated 26th October, 1832.

No. 727.
1831.
Reg. VII.
1817.
Reg. XX. Sec. 16,
Cl. 17.

I am directed by the Court to acknowledge the receipt of your letter of the 5th instant in reply to mine of the 7th ultimo, relative to the power of a session judge to sanction rewards for meritorious services, and with reference to the concluding paragraph of your letter, to state that the Court are of opinion that a session judge should be considered as having the same powers, in regard to the distribution of the commission on the value of property recovered, as the judges of circuit possessed under the former system.

The Western Court, on the 7th December, 1832, *concurred in this construction.*

October 26th, 1832.

From the Commissioner of Circuit 15th Division to the Register of the Presidency Court of Sudder Nizamut Adawlut, dated 22d September, 1832.

No. 728.
1817.
Reg. XX. Sec. 10,
Cl. 4.

Several complaints have lately been made to me, on the part of petty landholders, as touching the hardship suffered in consequence of certain arrangements lately made by the magistrates of two of the districts of this division, for securing the transmission of police packets under Clause fourth, Section 10, Regulation XX. of 1817, in cases where new thanahs have been made, or limits of old ones changed.

2. The principle on which the magistrates have acted appears very fair; namely, the charge for dawk runners to be borne by the landed proprietors in the proportion of the Government jumma; but I am sorry to say, that such is the extreme poverty of the lesser zemindars here, owing to failure of crops, and difficulty in getting rents paid and in now paying the Government revenue, that this dawk tax is felt as a very heavy exaction.

3. I wish therefore to know whether it might not be proper to exempt the landholders paying a small revenue to Government, say up to 125 rupees, and that the mofussil dawk shall be maintained by the wealthier zemindars whose estates and assessments are larger.

To the Commissioner of Circuit for the 15th Division, dated 26th October, 1832.

I am directed by the Court to acknowledge the receipt of your letter of the 22d ultimo, recommending that landholders paying a small revenue to Government should be exempted from contributing to the expence of the establishment of dawk runners, and that it should be maintained by the wealthier zemindars; and to inform you that, under the existing Regulations, the Court have no authority to sanction the exemption recommended, but to observe that the magistrate, in enforcing the provisions of Regulation XX.

1817, which relate to the subject, should exercise his discretion according to the circumstances of each case, leaving the party dissatisfied to appeal to you.

October 26th, 1832.

To the Commissioner of Circuit for the 18th Division, dated 2d November, 1832.

No. 729.

I am directed by the Court to acknowledge the receipt of your letter of the 16th ultimo and its enclosures, requesting the Court's orders regarding eighteen roobukarees in decided and twelve in undecided cases, which Mr. Davidson was unable to sign previously to his departure from Jessore on sick certificate.

2. In reply, I am directed to request that you will instruct Mr. Mills, the acting magistrate, to sign the roobukarees, the orders of which are recorded in Mr. Davidson's English note book in his hand writing, certifying thereon that he has compared them with the note book: and that in the cases of which no note is recorded, he pass such order as may on inspection of the proceedings appear just and proper, leaving the party dissatisfied with it to appeal in the regular course.

November 2d, 1832.

To the Commissioner of Circuit for the 18th Division, dated 2d November, 1832.

No. 730.
1821.
Reg. III. Sec 5, Cl. 1.
1807
Reg. IX. Sec. 23.

I am directed by the Court to acknowledge the receipt of your letter of the 15th ultimo and its enclosures, referring at the request of the acting joint magistrate of Barraset, the following points:—*First.* Whether a commissioner of circuit can admit an appeal from a magistrate's order, when the petition of appeal has not been presented within the period of thirty days prescribed by Section 5, Regulation III. 1821. *Secondly.* Whether he can reverse the order of a magistrate, refusing to admit a person to answer to a charge by attorney, without calling for his proceedings and examining the reasons, for passing them.

2. In reply to the first question, I am directed to observe that under Section 5, Regulation III. 1821, a person dissatisfied with a magistrate's order is entitled to an appeal to the commissioner, notwithstanding one month may have elapsed from the date of it, if the petitioner was prevented by circumstances totally beyond his control from presenting his petition within the prescribed period, and that it is for you to judge whether that was the case in the present instance or not. I am further directed to observe that though the petitioner be considered to have lost his *right* of appeal by being unable to shew sufficient cause for his delay, a commissioner is competent, under the general powers vested in him, to revise the magistrate's sentence or order, and alter or annul it, if it was illegal.

3. In reply to the second question, I am directed to observe that as the Court in a letter addressed to the magistrate of Ghazeepore on the 12th December, 1828, (No. 489, volume 1,) ruled that a court of circuit might admit a prisoner to bail without calling

for the magistrate's proceedings; so, in this case, they are of opinion that a commissioner may order a magistrate to admit a party to appear and answer by attorney if he sees sufficient reason for so doing.

November 2d, 1832.

From the Commissioner of Circuit 6th Division to the Register of the Nizamut Adawlut Western Provinces, dated 29th October, 1832.

No. 731.
1793.
Reg. XIII. Sec. 9.
1803.
Reg. XII. Sec. 12.
1806.
Reg. X. Sec. 10.

I have the honor to submit a letter from the magistrate of Allahabad relative to the construction of Section 12, Regulation XII. 1803.

2. I presume that it will be sufficient to refer the magistrate to Clause 3, Section 11, Regulation XX. 1817, whereby thannadars and other subordinate police officers, i. e. jemadars, mohurrirs, and burkundauzes are declared compellable, either on a criminal prosecution or by a civil action, to refund the amount received, the demand of security from the complainant preferring such charges being of course a preliminary step, as prescribed by Clause 1, Section 12, Regulation XII. 1803.

From the Magistrate of Allahabad to the Commissioner of Circuit 6th Division, dated 20th October, 1832.

I have the honor to acknowledge the receipt of your letter of the 11th instant, desiring me to state my opinion relative to the question which has been submitted by the joint magistrate, viz. " If a complaint be made against a thannadar or other subordinate police " officer for an act of corruption or extortion, or attempt to extort, is it necessary after the " charge is attested to demand security from the complainant to prosecute the charge " without delay? or, to state the question briefly, do thannadars and other subordinate " police officers (i. e. jemadars, mohurrirs, and burkundauzes) come under the denomi- " nation of native officers attached to the courts, specified in Section 12, Regulation XII. " of 1803?"

2. On an attentive consideration of the enactment referred to, it appears to me that although the term " ministerial officers" employed in the commencement of Section 12, may be regarded, as more immediately applicable to the sudder omlah attached to a court, yet for obvious reasons it could scarcely have been designed to exclude the mofussil officers from the operation of the law. I am, therefore of opinion that complaints against any individual attached to the mofussil police, above the grade of burkundauze, ought to be dealt with in the manner prescribed by the Regulation in question.

From the Register of the Western Provinces to the Commissioner of Circuit 6th Division, dated 2d November, 1832.

In continuation of my letter of the 2d November last, and in reply to the question referred to the Court by the magistrate of Allahabad in his letters of the 22d September and 20th October last, I am directed to inform you that although thannadars, and other

subordinate police officers do not come strictly within the terms of Section 12, Regulation XII. 1803, (Section 9, Regulation XIII. 1793,) or Section 10, Regulation X. 1806, by which the former is modified, the Court are of opinion that the principle of Section 10, Regulation X. 1806, is applicable to charges of corruption or extortion preferred against police officers, and that a magistrate is perfectly competent, whenever he may see reason to suspect any such charge brought against his police officers to be false and unfounded, to call on the person preferring the charge to give security for his attendance until the final decision of the case.

The Calcutta Court, on the 30th November, 1832, *concurred in this construction.*

November 2d, 1832.

To the Session Judge of Zillah Sarun, dated 9th November, 1832.

No. 732.
1812.
Reg. XX. Secs. 7 and 10.

I am directed by the Court to acknowledge the receipt of your letter of the 17th ultimo and its enclosures, and in reply to inform you that the Court are of opinion that under Section 10, Regulation XX. 1812, powers of attorney produced by persons attending on behalf of others to procure the registry of deeds should be entered in a separate book, as directed by Section 7 of the same Regulation.

The Western Court, on the 7th December, 1832, *concurred in this construction.*

November 9th, 1832.

Extract from a Letter addressed to the Session Judge of Mymensingh, dated 9th November, 1832, *in his reply to his of the 8th October,* 1832.

No. 733.
1817.
Reg. XX. Sec. 19.

Para. 2. With reference to the doubt expressed in the 3rd paragraph of your letter to the magistrate, as to the propriety of the thannah mohurrirs taking down in writing a second examination of a prisoner, I am directed to observe that no Regulation prohibits the practice, and that the mohurrir would not have been justified in refusing to record any declaration or confession which the prisoner wished to make. You are requested to communicate this opinion to the magistrate.

November 9th, 1832.

To the Register of the Nizamut Adawlut Western Provinces, dated 9th November, 1832.

No. 734.
C. O. 27th April 1810.
1818.
Reg. VIII. Sec. 7.
1825.
Reg. IV. Sec. 3.

I am directed by the Court to acknowledge the receipt of your letter of the 31st August last, and its enclosures, requesting to be informed what was the intention of the Court in issuing the circular order of the 27th April 1810, No. 70 of volume I, circular order Nizamut Adawlut.)

In reply, I am directed to observe that the circular order in question appears to have been issued in consequence of an order contained in the accompanying sentence passed on the trial of Comla Domo and others for dacoity, and that no document is forthcoming from which the intention of the judges by whom it was ordered, as to the mode in which the penalty of the security bonds are to be enforced, can be discovered. The Presidency Court however are of opinion that the penalty should be enforced by the magistrate, according to the same rules and by the same process observed by the civil courts in enforcing payment of money adjudged to be due by a decree.

November 9th, 1832.

From the Judge of Zillah Moradabad, dated 31st October, 1832.

No. 735.
Assistants to Judges cannot be employed in investigating and deciding miscellaneous cases relating to execution of decree.

With reference to the letter of the deputy secretary to Government to the address of the commissioner under date the 28th August last, regarding the employment of assistants, I request you will do me the favor to ascertain from the judges of the Sudder Dewanny Adawlut whether in the opinion of the Court an assistant may with propriety be employed by a civil judge in investigating and deciding miscellaneous cases relating to the execution of decrees.

To the Judge of Zillah Moradabad, dated 9th November, 1832.

I am directed by the Court to inform you, in reply to your letter of the 31st October last, that assistants to judges cannot be employed in the investigation and decision of miscellaneous cases connected with the execution of decrees, the enactments cited in the orders of Government under date 28th August last, containing no authority for entrusting such duties to those officers.

The Calcutta Court, on the 7th December, 1832, *concurred in this construction.*

November 9th, 1832.

Extract of a Letter from the Magistrate of N. D. Moradabad to the Commissioner of Circuit of the 4th Division, under date the 25th September, 1832.

No. 736.
1831.
Reg. XI. Sec. 8.

Para. 10. There is also another point which it occurs to me is not clearly established, viz. your competency to interfere in the appointment of thanadars. By Section 7, Regulation XVII. of 1816, it is distinctly laid down that magistrates shall not be required to report the appointment, suspension or removal of police officers to the court of circuit. It may be objected that Section 8, Regulation XI. 1831, modifies the above rule, but it seems doubtful whether one section only of a regulation, which is not in force in this district, was intended by Government to be considered as law before the other sections to which it has reference were put in force. I have to request that the point may be settled by a reference to the Nizamut Adawlut.

Extract of a Letter from the Register of the Western Provinces to the Register of the Calcutta Court, dated 9th November, 1832.

Para. 2. The Court are of opinion, with regard to the point referred, that the provisions of Section 8, Regulation XI. 1831, apply to the whole of the ceded and conquered provinces, and not only to those districts in which tehsildary establishments are maintained; the concluding clause of the preamble to that Regulation distinctly extending the modified rules for the removal of police officers to the ceded and conquered provinces in general.

The Calcutta Court, on the 7th December, 1832, *concurred in this construction.*

November 9th, 1832.

From one of the Judges of the Calcutta Court of Appeal to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 30th October, 1832.

No. 737.
1793.
Reg. XIII. Sec. 9.
1803.
Reg. XII Sec. 12.

Not concurring in opinion with Mr. C. R. Martin, that the case of Raj Kishore Puharee versus Hurochunder Lahuoree should be referred immediately to the magistrate of the suburbs of Calcutta, I have to request that you will ascertain the sentiments of the superior court on the subject.

2. I am not satisfied that we are debarred from the cognizance of any charge whatever of delinquency brought against the officers of our court in their official ministration; but the accusation before us being one which imputes to the individual arraigned what I consider we are empowered to inquire into, under the provisions of Section 9, Regulation XIII. 1793, and under which we are required to entertain the complaint, and if, on completing the investigation, we deem him guilty of such corruption as may appear to call for more exemplary punishment than the court could subject him to, under Clause 8, Section 9, Regulation XIII. 1793, then I apprehend it will be necessary in furtherance of Regulation XVIII. 1817, to refer the case to the commissioner of circuit.

3. As three of the prosecutor's witnesses have not been examined, nor any return received from the judge of 24-purgunnahs, regarding the appearance or non-appearance of one of the above witnesses, it would be premature in me now to record my opinion as to the defendant's innocence or guilt. Nevertheless in fairness I may observe that in my opinion the prosecutor has heretofore failed to establish the charge of an interpolatory order regarding the institution of a suit *de novo* on a certain document filed in the case.

4. In conclusion I have to request that you will ascertain from the Court whether we are authorized and required to complete the investigation, or are we directly to refer the whole question to another and to what other authority.

To the Calcutta Provincial Court of Appeal, dated 16th November, 1832.

I am directed by the Court to acknowledge the receipt of a letter from Mr. Curtis of the 30th ultimo, and its enclosures.

2. In reply, I am directed to inform you that the Court are of opinion that, in the case alluded to, your Court should complete the summary enquiry which has been com-

menced. If the majority of the judges should be of opinion that the case is one which calls for exemplary punishment, you should direct the vakeel of Government to institute a criminal prosecution against the defendant in the court of the magistrate of the suburbs of Calcutta. But that, in the event of your not thinking it necessary to adopt this measure, it will be of course optional with the prosecutor either to do so himself, or to seek redress by instituting a suit against the defendant in the civil court.

November 16*th*, 1832.

No. 738.
1831.
Reg. VIII. Sec. 4.

From the Judges of the Benares Court of Appeal to the Register of the Western Provinces, dated 9th November, 1832.

We beg to transmit for the consideration and orders of the superior Court copies of a correspondence relative to the execution of decrees passed in summary suits.

From the Judge of Zillah Mirzapore to the Judges of the Benares Court of Appeal, dated 25th September, 1832.

I have the honor to forward for your consideration a copy of a letter addressed to me by the collector of this district, with copies of Persian proceedings holden by me in the civil court; and I request to be favored with your opinions, as to the discretion vested in the judge, to stay the execution of a summary decree which has been passed by the collector.

2. Though I admit the full force of Mr. Lindsay's arguments, as far as it concerns the general construction to be put upon the provisions of regulations relating to summary suits, still I cannot help thinking that the Government intended to leave to the judge a discretionary power of stopping the execution of a summary decree, under particular circumstances.

3. Mr. Lindsay remarks that in "Section 4, Regulation VIII. 1831, it is stated "that the decision of the collector of land revenue shall be final, subject to a regular "suit: but it is nowhere stated or implied that the execution of decrees passed by "collectors shall be stayed in consequence of regular suits being filed." To this I will add, that it is nowhere prohibited to stay the execution of a summary decree on a regular suit being filed.

4. Some definitive rule appears to be requisite, in order to prevent collision, and I would respectfully suggest the expediency of your Court procuring the sentiments of the judges of the Sudder Dewanny Adawlut on the subject.

From the Collector of Mirzapore to the Judge of that District, dated 28th August, 1832.

Having lately received three roobucaries from your Court directing that the execution of decrees passed in summary suits under Regulations V. of 1800, V. of 1812, and VIII. of 1831, should be stayed in consequence of regular suits having been filed in the Dewanny Court,

I do not consider that I should be acting legally in meeting the requisition made by you. In Section 4, Regulation VIII. 1831, it is stated that the decision of the collector of land revenue shall be final, subject to a regular suit; but it is nowhere stated or implied that the execution of decrees passed by collectors shall be stayed in consequence of regular suits being filed. On the contrary Clause 20 of the same Regulation refers to Clause 23, Regulation VII. 1822, and points out the distinct manner in which awards made by collectors shall be executed.

2. Our opinion differing so widely as to the constructions to be given to the provisions of Regulation VIII. 1831, it occurs to me that much inconvenience may arise from the view you have taken of it, and perhaps you will agree with me that it will be desirable to refer the point to the Court of Sudder Dewanny.

From the Register of the Sudder Dewanny Adawlut Western Provinces to the Judges of the Provincial Court of Appeal at Benares, dated 16th November, 1832.

In reply to your letter of the 9th instant, I am directed by the Court of Sudder Dewanny Adawlut for the Western Provinces to inform you that in the opinion of the Court of a judge is not competent to stay the execution of a summary award passed by a collector, pending the trial of a regular suit instituted in the civil court, to set aside that award. No provision in the regulations in force appears to the Court to invest the judge with this power, and the whole object of the summary process would be evidently defeated, as observed by Mr. Lindsay, if the execution of the award were liable to be stayed until the final adjustment of a regular suit.

The Calcutta Court, on the 7th December, 1832, *concurred in this construction.*

November 16th, 1832.

From the Judge of the Calcutta Court of Appeal, dated 6th November, 1832.

No. 739.
1793.
Reg. III. Sec. 8.
1803.
Reg. II. Sec. 5.

I shall be obliged by your laying the following case before the Superior Court, and to obtain for me their opinion as to the propriety or otherwise of my proceeding in it, or transferring it to the Dacca Provincial Court.

Case No. 50 of 1826, 2d June. Muha Raja Sheokissen Bahadoor and seven others, plaintiffs, *versus* Soobulchunder Dutt Moonshee and his securities, Kissenpershad Dutt, Bulram Dutt, and Radhanath Dutt, defendants.

Claim. Arrears on account of the juma of 1231 and 1232, B. S. of the estate of pergunnah Gunga Mundul, zillah Tipperah, Rupees 46,607-8.

Plaint. The petition of plaint states that the above pergunnah was leased by the plaintiffs to Soobulchunder Dutt moonshee, on the security of Kissenpershad Dutt, Bulram Dutt, and Radhanath Dutt, for a term of four years, viz. from 1231 to 1234 B. S. for an annual jumma of rupees 1,14,969-6-17, of which 51,969-6-17, was to be paid by the lessee into the Government treasury, on account of the *surkaree juma* and the remainder sum, or rupees 63,000, to the zumeendars, the plaintiffs. That in the first year of his

lease the former fell in balance rupees 2,086, including interest; and in the following year, rupees 44,521-8. Meanwhile the farmer died, and no one appeared either on his behalf, or that of his securities, to manage the estate. For both the sums, or rupees 46,607-8, the plaintiffs seek for redress against the defendants, his heirs and securities.

Defence. Ramdhund Dutt, one of the defendants, appeared, and in his answer to the plaint not only denies the claim as unfounded, but disputes the jurisdiction of the Calcutta Provincial Court, alleging that the pergunnah lies in the district of Tipperah belonging to the jurisdiction of the Dacca Provincial Court, where, agreeably to Section 8, Regulation III. 1793, the action ought to have been brought on.

2. It would appear that the estate, for the balance of the produce of which the present action is instituted, is actually situated in the district of Tipperah. The defendants however have no property in that district. All their property lies within the district of Hooghly, appendant to the Calcutta Provincial Court, where they likewise reside. The qubooleeut also, upon which the claim is founded, was executed within the town of Calcutta in the jurisdiction of the Supreme Court. The plaintiffs' petition of plaint, with reference to the amount of claim is drawn upon a stamp of the value of 750 rupees, and was filed in this Court on the 1st of August, 1826. The petition of defence is written on stamp of the value of four rupees.

Extract from a Letter addressed to the Calcutta Provincial Court, dated 23d November, 1832.

Para. 2. In reply, I am directed to communicate to you the opinion of the Court that the suit being for a sum of money, and the defendants all residing in zillah Hooghly, your court is competent to take cognizance of it.

November 23d, 1832.

To the Acting Judge of Zillah Behar, dated 7th December, 1832.

No. 740.
1814.
Reg. XXVIII. Sec. 10, Cl. 2.

I am directed by the Court to acknowledge the receipt of your letter of the 19th ultimo, and in reply to inform you that the vakeel of the pauper plaintiff, whose claim was dismissed, is not entitled to receive any portion of the fee deposited by the defendant on account of her vakeel.

December 7th, 1832.

To the Commissioner of Circuit for the 14th Division, dated 7th December, 1832.

No. 741.
1821.
Reg. III. Secs. 3 & 4.
1831.
Reg. V. Sec. 18, Cl. 6.

I am directed by the Court to acknowledge the receipt of your letter of the 22d ultimo and its enclosure, and in reply to inform you that as sudder ameens are to be guided, under Sections 3 and 4, Regulation III. 1821, in criminal cases referred to them, by the rules prescribed for the guidance of assistants to magistrates, the Court are of

opinion that their processes in such cases should be issued under their own signatures, but under the seal and through the officers of the magistrate.

The Western Court, on the 11*th January*, 1833, *concurred in the above construction.*

December 7*th*, 1832.

To the Judge of Zillah Midnapoor, dated 14*th December*, 1832.

No. 742.
1831.
Reg. IX. Sec. 8.

I am directed by the Court to acknowledge the receipt of your letter of the 26th ultimo, and in reply to inform you that in order to provide against the possible loss of the original proceedings in cases appealed to this Court in their transmission, the Court deem it necessary that copies be retained of all original papers so sent; but with regard to the papers which should be sent, I am directed to refer you to Section 8, Regulation IX. 1831, and to observe that the Court's circular order of the 18th May last directs that the original papers shall not be copied or sent with petitions of appeal filed in the lower court under the rule contained in Section 8, Regulation XXVI. 1814, until called for a precept.

1831.
Reg. V. Sec. 16, Cl. 3.
Reg. IX. Sec. 2, Cl. 2.

2. With reference to your last paragraph I am directed to refer you to the circular order of the 24th August last, which explains that all first appeals must be admitted as a matter of right, provided they be preferred within the period prescribed by the Regulations: so that the confirmation of the decision of the lower court, prior to a perusal of the original proceedings, is to be considered, not as a rejection, but a final dismissal of the appeal on consideration of its merits.

December 14*th*, 1832.

To the Judge of Zillah Rajshahye, dated 14*th December*, 1832.

No. 743.
1824.
Reg. IV.

I am directed by the Court to acknowledge the receipt of your letter of the 1st instant and its enclosures, and in reply to communicate to you their opinion that a register of deeds not being the register of the zillah or city court, is entitled, while officiating for the judge during the absence of the latter, to fees on the registry of all deeds executed by him.

The Western Court, on the 5*th February*, 1833, *concurred in the above construction.*

December 14*th*, 1832.

From the Judge of Zillah Purneah, dated the 5*th December*, 1832.

No. 744.
No decree can be enforced against a third person, not a party thereto.

I have the honor to request that you will obtain for me the opinion of the Court of Sudder Dewanny Adawlut on the following case.

A person, A, possesses a certain portion of land, say 200 beegahs, of which he sells 50 to B, and subsequently executes a mortgage deed to C, by which, on borrowing a

certain sum of money, he mortgages the whole 200 beegahs to him ; but possession is not given. On the expiration of the period fixed for the repayment of the loan, C applies to the Court for a foreclosure of the mortgage, and, after going through the necessary forms, brings an action for making the sale absolute, and obtains a decree in his favor for the whole 200 beegahs. On proceeding to execute this decree, it appears that 50 beegahs have been already sold to B. What I wish to be informed is, whether the decree, which was given in the absence of B, whose purchase was not made known to the Court till after it had been passed, must be fully enforced, or whether the prior purchaser, B, (whose purchase at the time he made it was good and valid), can be allowed to retain his 50 beegahs ? In other words, must a decree given by a court be enforced according to its letter, however it may interfere with the rights of absent parties ?

To the Judge of Zillah Purneah, dated 21st December, 1832.

I am directed to acknowledge the receipt of your letter of the 5th instant, and in reply to inform you that no execution of a decree will hold beyond the right of the party against whom it may have been passed : consequently, in the case put by you, B, not having been a party to the suit instituted by C against A, cannot be ousted from his land in execution of the decree passed in favor of C.

December 21st, 1832.

From the Judge of Zillah 24-Pergunnahs, dated 13th December, 1832.

No. 745.
1806.
Reg. II. Secs. 4 & 5.

I request you will have the goodness to obtain the opinion of the Court on the following points.

Query.1st. If a defendant absconds or shuts himself up in his house to avoid a process taken out against him agreeably to Section 4, Regulation II. 1806, how am I to proceed? Is the property of the defendant to be attached or not, in the event of the plaintiff applying for that purpose ?

Query 2d. In the event of the nazir or the person on his part deputed to serve process agreeably to Section 4, Regulation II. 1806, entering freely and without any obstruction being offered into the *compound* of the house of the defendant; may he proceed to force an entrance into the house, in the event of the defendant shutting the doors of the house against him ?

To the Officiating Judge of Zillah 24-Pergunnahs, dated 21st December, 1832.

I am directed by the Court to acknowledge the receipt of your letter of the 13th instant, and in reply to the first question put by you, to refer you to Section 5, Regulation II. 1806, which expressly authorizes the attachment of the property of the defendant to secure the execution of the ultimate judgment, where sufficient security is not given: and with reference to the 2d question, to state that a mere entry into the compound does

not authorize the officer in charge of a process to break open an outer door, in order to serve it.

December 21*st*, 1832.

From the Register of Western Provinces to the Register of the Presidency Court, dated 9th November, 1832.

No. 746.
1808.
Reg. X. Secs. 6 and 7.
1816.
Reg. XVIII. Sec. 2.
1831.
Reg. IX. Sec. 3.

I am directed by the Court to transmit for the purpose of being laid before the Presidency Court of Nizamut Adawlut, the annexed copies of a correspondence which has taken place between the commissioner and the magistrate of zillah Goruckpore and this Court, regarding the power of commissioners to address orders, calling for information, direct to the officers on the jail establishment of a zillah.

2. The letter addressed by order of the Court to the commissioner under date 5th October, was inadvertently despatched without previous reference to the Presidency Court. As a second reference has since been made, and the omission brought to their notice, a copy of that letter is herewith forwarded, and the opinion of the Presidency Court is solicited with regard to the construction therein adopted. The final decision of the question will be deferred until the receipt of an answer.

The interpretation of the law which the Court propose to adopt is founded on the 6th and 7th Sections of Regulation X. 1808, under which the commissioner, in his capacity of superintendent of police, is competent to "issue process either by "means of his own officers or through the local authorities;" also "to correspond "publicly or secretly with the officers of Government in every department upon "subjects connected with the discharge of his duty;" the duty of superintending the jail establishments having been entrusted to superintendents of police by Regulation XVII. 1816. It is further worthy of remark that under the present system no authority superior to that of the commissioner exists in matters connected with the management of jails, the cognizance of the Nizamut Adawlut having been withdrawn from all cases "other than criminal trials."

From the Register of Western Provinces to the Commissioner of Circuit 9th Division, dated 5th October, 1832.

I am directed by the Court of Nizamut Adawlut for the Western Provinces to acknowledge the receipt of your letter of the 29th ultimo with its enclosures, containing copies of a correspondence which has taken place with the magistrate of zillah Goruckpore, regarding certain perwannahs addressed by you to the darogah and jemadar of the jail.

2. In reply, I am directed to observe that the magistrate of Goruckpore appears to have been under an error in supposing that commissioners are not empowered to address perwannahs calling for information to the subordinate jail and police officers.

3. The Court however are of opinion, that this course should not be adopted by the commissioner, except under special circumstances which render it necessary to deviate from the ordinary practice. You will be pleased to make the magistrate aware of his error, transmitting for his information and guidance, copy of this communication.

From the Register of the Nizamut Adawlut at Calcutta to the Register of the Court for the Western Provinces, dated 28th December, 1832.

I am directed by the Court to acknowledge the receipt of your letters of the 9th and 30th ultimo, and 12th instant, and their respective enclosures, on the subject of the power of a commissioner of circuit to issue orders direct to the jail officers.

2. The Presidency Court having duly considered the papers referred to, are of opinion, that as the magistrate of Goruckpore has distinctly avowed any intention of questioning the power of the commissioner to interfere with his police officers, the decision on the reference should be confined to the point "whether a commissioner of "circuit is authorized by the Regulations to issue orders direct to jail officers regarding "the management of the jails." They are of opinion that neither the regulations nor the jail rules authorize the commissioner, either as judge of circuit or as superintendent of police, to exercise such interference. They are moreover of opinion that Sections 6 and 7, Regulation X. 1808, referred to by the Western Court, are applicable solely to matters of police, and cannot be considered to bear on the point at issue; and that the duty imposed on the superintendent of police by Section 2, Regulation XVII. 1816, of preparing and keeping up a register of jail establishments, was not intended to confer upon him the power of in any way interfering directly with the internal management of the jail or the officers attached to it.

3. With reference likewise to the concluding part of your letter of the 9th ultimo, the Presidency Court feel themselves constrained to dissent from the opinion that the cognizance of the Nizamut Adawlut of cases connected with the management of jails has been withdrawn; the rule contained in Section 3, Regulation IX. 1831, not being in their judgment, applicable to matters of that nature.

4. Under these circumstances I am directed to request that you will lay this letter before the Western Court for re-consideration, or, if necessary, that the question may be referred for the decision of Government.

On the 8th February, 1833, *the majority of the Western Court, on re-consideration of the subject, concurred in the above construction of the law.*

December 28th, 1832.

From the Commissioner of Circuit 6th Division to the Register of the Nizamut Adawlut Western Provinces, dated 19th November, 1832.

No. 747.

With reference to the last paragraph of your letter of the 26th ultimo, I have the honor to transmit a letter, with its enclosure, from the officiating head assistant to the

magistrate at Futtehpore under date the 12th instant, respecting the general order issued by a former magistrate prohibiting the sale and transfer of property without giving intimation to the police.

From Officiating Head Assistant to the Magistrate of Futtehpore to the Commissioner of Circuit 6th Division, dated 12th November, 1832.

In reply to your letter of the 6th enclosing an extracted paragraph of a letter from the register to the Nizamut Adawlut calling upon me to furnish any explanation upon the subject of any general order that may have been issued by a former magistrate prohibiting the sale and transfer of property without giving intimation to the police, I beg to state that after enquiry into the records of this office I have discovered a written order to that effect. It appears also to be generally understood that such conduct is to be pursued by buyers and sellers of property.

From the Register of Western Provinces to the Register of the Presidency Court of Nizamut Adawlut, dated 30th November, 1832.

I am directed by the Court to transmit for the purpose of being laid before the judges of the Presidency Court the annexed correspondence with the commissioner of the 6th division, regarding an order issued by a magistrate of zillah Futtehpore prohibiting the transfer of cattle and other goods without the permission of the police.

2. Should any order with regard to a similar prohibition have been already issued by the Presidency Court, the Court request that a copy of the same may be transmitted for their information. If no orders have been hitherto passed on the subject, the Court propose, with the concurrence of the Presidency Nizamut Adawlut, to annul the order in question, and to direct the commissioner to take measures for freeing the sale and transfer of property in zillah Futtehpore from the impediments thrown in its way by this prohibition, which they consider highly objectionable.

To the Register of the Nizamut Adawlut for the Western Provinces, dated 28th December, 1832.

I am directed by the Court to acknowledge the receipt of your letter of the 30th ultimo, and its enclosures, and in reply to inform you that I have been unable to discover any orders issued by the Court on the subject of the interference of the police in the sale and transfer of property; and to communicate to you the concurrence of the Presidency Court in the order proposed to be issued through the commissioner of circuit of 6th division to the magistrate of Futtehpore, prohibiting such interference.

December 28th, 1832.

Extract of a letter from the Judges of the Provincial Court of Appeal for the Division of Bareilly, under date the 21st December, 1832.

No. 748.
1831.
Reg. V. Sec. 27.

Para. 2. We at the same time beg to submit whether the Court of Appeal be not distinctly prohibited by existing regulations from entertaining appeals from the zillahs in which Regulation V. 1831, has taken effect, from decrees or other orders made previous to the introduction of Regulation V. 1831, such appeals not having been presented in the zillahs or to this court till after the introduction of that regulation. An order of the superior Court, however, we consider called for to satisfy the public mind of the correctness of our construction, as above, of existing regulations or to alter our constructions.

To the Judges of the Provincial Court of Appeal, for the Division of Bareilly, dated 4th January, 1833.

On the point referred in the 2nd paragraph of your letter of the 21st December last, I am directed to state the Court's opinion that no appeals can be admitted in your court in cases originating in zillahs in which Regulation V. 1831, has been introduced; unless the application for the admission of appeal is preferred previously to the date fixed on for the commencement of the operation of that regulation.

The Presidency Court, on the 25th January, 1833, concurred in this construction.

January 4th, 1833.

To the Officiating Magistrate of Zillah Furruckabad, dated 4th January, 1833.

No. 749.
1829.
Reg. XVII.
C. O. 4th Dec. 1829.

I am directed by the Court to acknowledge the receipt of your predecessor's letter of the 26th ultimo, reporting the occurrence of a suttee in your district.

2. The Court are gratified to observe that the persons who assisted in burning the woman, and in eluding the attempt of the police to prevent the suttee, have been committed for trial at the sessions.

3. With regard to the remarks contained in paragraphs 4, 5 and 6 of the communication under acknowledgment, the Court observe that they do not agree with Mr. Shore in deeming the circular order of the 4th December, 1829, liable to be understood as prohibiting the use of force in the event of an attempt to persist in performing the ceremony after due warning: the Court observe that paragraph 4 of that circular order distinctly contemplates the occasional use of forcible interference, and directs that it should be used with circumspection; and the reference to Clause 2d, Section 3d, of the regulation in paragraph 3 of the instructions to the police, renders it sufficiently clear that the dissuasion and remonstrance therein recommended are by no means intended to supersede the use of force, in case of the milder means proving of no avail. The Court conclude that copies of the regulation were circulated with these instructions in your zillah as directed by the 2d paragraph of the circular order.

4. The Court are not aware of the necessity of annexing any further penalties to the offence than those laid down in the regulation itself. The proposal for subjecting

to pecuniary fine the zemindar within whose estate the suttee takes place, appears contrary to the general principle of the existing laws in matters of police, and consequently objectionable.

The Presidency Court, on the 1st February, 1833, concurred in this construction.

January 4th, 1833.

Extract of a letter from the Session Judge of Zillah Cuttack to the Register of the Presidency Court of Nizamut Adawlut, dated 15th December, 1832.

No. 750.
1803.
Reg. LIII.
Sec. 3, Cl. 1.
Sec. 4, Cl. 4.

Para. 4. I beg here to observe that the joint magistrates appear to have imbibed the idea that a number of persons going out and committing a robbery is sufficient to constitute the offence of dacoity or gang robbery, although it is not proved that they were guilty of any act of aggravation, or were armed, nor that the prisoners were in fact guilty of any thing but theft unattended with aggravating circumstances.

Extract of a letter addressed to the Session Judge of Zillah Cuttack, in reply to his letter of the 15th December, 1832, *dated 4th January*, 1833.

Para. 2. The Court direct me to observe that you have entirely mistaken the meaning of the term dacoity or gang robbery, and that the idea entertained by the joint magistrates, as stated in your fourth paragraph, is correct. In Clause 1, Section 3, Regulation LIII. 1803, it is distinctly declared that any person or persons, " who shall, in the day, or in the night, go forth with any offensive " weapon, *or in a gang with or without an offensive weapon*, with the criminal " intent of committing *robbery*, and shall, by force or intimidation, *rob* or *attempt* " *to rob* any person or persons, shall be deemed guilty of the crime of robbery by open " violence," or dacoity—and in Clause 4, Section 4, of the same Regulation, the mere act of going forth with a gang for the purpose of committing *robbery* is declared punishable with imprisonment not exceeding seven years.

January 4th, 1833.

To the Commissioner of Circuit for the 15th Division, dated 4th January, 1833.

No. 751.
1817.
Reg. XXV.

I am directed by the Court to acknowledge the receipt of your letter of the 10th ultimo, and its enclosure, from the magistrate of the city of Dacca, requesting their opinion as to the propriety of the magistrate's interfering to regulate the exchange of copper into silver; and in reply to inform you, that the Court are of opinion, that as Regulation XXV. of 1817, contains no penal clause which would sanction the interference of the magistrate, he was right in refraining from interposition in the matter. Copies however of your letter and its enclosure will be submitted for the orders of Government.

January 4th, 1833.

752.
4 January, 1833.

From the Acting Judge of Zillah Bundelkhund to the Register of the Court of Sudder Dewanny Adawlut, Western Provinces, dated 3d December, 1832.

No. 752.
1806.
Reg. II. Sec. 10.
1827.
Reg. V.

I have the honor to submit copies of Persian correspondence between the collector and deputy collector of the southern division of Bundelkhund and this court relative to realizing the amount of a decree of court from the attachment of the defendant's landed property, and to request the instructions of the Court with a view to my future guidance.

2. Precepts were addressed by me to the deputy collector and collector to attach the lands of Ramtapershaud and Gunput Roy Pundit, defendants, and the replies received from those officers being nearly word for word and the case nearly similar, copies of one and the same Persian proceeding dated 13th November, 1832, were sent to each of them, again directing them to execute the orders of the Court agreeably to the provisions of Section 39, Regulation XXVII. 1803 and Section 3, Regulation V. 1827.

3. In the 1st case, namely, that of Gunput Roy, the Court will observe that the defendant, who was cast in the suit, petitioned that his jageer might be attached and the proceeds appropriated to the liquidation of the monies decreed, and the opposite party, the decree holder, assented to this arrangement; the deputy collector however demurred to the Court's orders on the grounds that "no Regulation ordered the collector to attach "lands for this purpose," and proceeded to quote Section 9, Regulation III. 1803, Section 5, Regulation II. 1806, and Section 2, Regulation V. 1827; meaning of course that the lands of the defendant ought to be sold, and not attached.

4. I beg however to submit that the only legitimate grounds upon which the deputy collector could have demurred to the Court's orders directing attachment of lands were these, viz. that the lands were in khas management, or that they were liable to resumption, and that process to that effect had commenced, or that the Government had some claim or other upon them. No such reasons however are urged in his proceedings. He reasons as to the *legality* of the Court's realizing monies decreed by this process of attachment, and notwithstanding that I directed attachment either through a teshsildar or an ameen specially appointed for the purpose, (in which latter case no increase of business could accrue, and all expenses would be defrayed by the defendant,) he states in conclusion that attaching lands gives trouble to the revenue authorities.

5. It appears therefore to me that Government having no claim to the land, and the order for attachment through an ameen (to be specially appointed for the purpose) having been issued by the Court, the deputy collector exceeded his powers in demurring on the grounds he did; and that his duty was purely ministerial, namely, to obey the Court's orders agreeably to Section 39, Regulation XXVII. 1803, and Regulation V. 1827.

6. I beg however to state that I think the deputy collector's legal view of this case (supposing him authorized to advance his opinion,) is wrong; he states no regulation orders the collector to attach lands with a view to realize monies decreed; by which I presume he means no regulation authorizes the Court to order such attachment. To this I beg to reply that no regulation prohibits it, the ordinary process for realizing monies decreed is, as is well known to all, laid down in Section 2, Regulation

III. 1803; but this regulation of course pre-supposes that the plaintiff has no other remedy than compulsion, that selling the lands or attaching the person of the defendant is necessary, that in short doing so is his last though legal resource. I cannot suppose that in the event of both plaintiff and defendant agreeing to realization by attachment (they being the only interested parties,) the civil court must of necessity proceed to sell the defendant's hereditary property or imprison him, contrary to the wish of him to whom the monies are due. I do not think such a procedure would be warranted by the spirit of the regulations or by justice.

7. I beg further to submit that agreeably to the letter of Section 10, Regulation II. 1806, the orders of this court must be considered legal. The above enacts that the civil courts are in general restricted from granting indulgence of time in the satisfaction of a final judgment, "unless the party in whose favor the decree is passed, shall consent to "waive his right of immediate enforcement under an engagement for gradual payments or "otherwise." Now it appears to me quite clear that realizing sums decreed by attachment of land or in other words from the collections, from harvest to harvest, or at the periodical collections, is to all intents and purposes "a gradual payment" by instalments, at the same time the land being under attachment by the court through the collector, supersedes the necessity of security (either malzamin or hazirzamin,) required by the regulation above quoted.

8. The reply of the deputy collector was first received, and the only difference between the original orders of this court addressed to him and to the collector, was that the collector was ordered to attach through the tehsildar; but subsequently, as the Court will see from a perusal of my Persian rubukary of the 13th November, 1832, I again directed attachment, but stated that it should be by an ameen. The collector however still insists (in answer to my detailed statement,) that my orders are illegal and contrary to the regulations, which regulation he does not say.

9. Both the above officers having obeyed the Court's instructions under a protest of reference to higher authority, I consequently have deemed it necessary to trespass thus at length the reasons which induced me to urge the execution of the Court's orders and to obtain a rule for my future guidance.

Proposed letter from the Register of the Sudder Dewanny Adawlut, Western Porvinces, to the Acting Judge of Bundelkhund, dated the 21st December, 1832.

I am directed by the Court to acknowledge to receipt of your letter of the 3d instant.

2. In reply, I am directed to inform you that the arrangement for preventing of the sale of the estates in question by retaining them under attachment until the amount due has been realized from the proceeds, appears to the Court in the light of an adjustment between the parties themselves; the judge being incompetent to originate such an order himself. In attaching the estate therefore the judge acts under the applications of the parties, and not under the provisions of the regulations quoted in the 2d Section of

Regulation V. 1827, and alluded to in the 3d Section. Under this view of the subject the Court are of opinion that you were not competent to issue directions to the collector under Section 3, Regulation V. 1827, to attach, in the instances detailed in your letter; but should have proceeded to make the attachment yourself, deputing an ameen for the purpose, and in fact merely carrying directly into effect the arrangement for payment of the amount of the decrees, to which the parties to the suits had agreed.

From the Register of the Sudder Dewanny Adawlut at Calcutta to the Officiating Secretary to Government in the Judicial Department, dated 1st February, 1833.

I am directed by the Court to request you will lay before the Honorable the Vice President in Council the accompanying copies of a letter, and its English enclosures, from the register of the Court of Sudder Dewanny Adawlut for the Western Provinces, dated the 21st December last.

2. The Presidency Court concur in the opinion expressed by the Western Court that the zillah judge was competent, under the circumstances stated, to attach the lands in question: but with reference to the intent and spirit of Regulation V. 1827, as expressed in the preamble, that "it is expedient in all cases of attachment of landed property under orders of the courts of justice, that the management of the estate attached "should be placed under the superintendence of the collectors of land revenue," they do not concur with them in thinking that the judge ought himself to have made the attachment through an ameen, but that it was incumbent upon him to issue the orders he did to the collector; the attachment having been induced by a private adjustment between the parties, not making any difference in the course he was legally bound to pursue towards effecting it.

3. Differing therefore from the Western Court on a construction of the law, the Court direct me, under paragraph 2 of the resolutions of Government under date the 6th December, 1831, to request that you will submit the point at issue for the decision of Government.

The Government, on the 8th March, 1833, *concurred in opinion with the Calcutta Court.*

February 1st, 1833.

From the Judge of the Dacca Court of Appeal to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 18th January, 1833.

No. 753.
1831.
Reg. V. Sec. 27.

I request you will lay this letter before the judges of the Court of Sudder Dewanny Adawlut for their opinion and orders.

2. Petitions for the execution of dècrees in cases appealed from zillah courts continue to be presented subsequently to the jurisdiction of the provincial court having been suspended under Section 27, Regulation V. 1831. I therefore request to be informed whether it be the opinion of the Sudder Dewanny Adawlut that Clause 2 of the above Section leaves the provincial court the power of receiving and acting upon such petitions

as heretofore, as well as of receiving in the course of execution of such decrees petitions appealing against any irregularity, or errors or deviation from the decree on the part of the zillah judge.

3. The Regulation is silent on the subject of the execution of decrees, and a strict adherence to the letter would prevent any interference or the receiving of any sort of appeal "in any matter which may arise after the date aforesaid."

4. A petition for execution of a decree, may perhaps not be considered a matter so arising, but the disobedience of any order or the departing from the decree in executing it, would clearly be a "new matter arising after the date aforesaid;" and it is obvious that it would be an absurdity for a provincial court to order the execution of a decree, without having the power to enforce that order. I am therefore compelled to solicit the superior Court's opinion and orders.

To the Provincial Court of Appeal, Dacca, dated 1st February, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 18th ultimo; and in reply to inform you that they are of opinion that you are competent, under the 2d Clause of Section 27, Regulation V. 1831, to receive an act upon petitions for the execution of decrees appealed from the zillah courts as heretofore, as well as to receive, in the course of the execution of such decrees, petitions appealing against any irregularity, or errors or deviation from the decree on the part of the zillah judge.

The Western Court, on the 1st March, 1833, *concurred in this construction.*

February 1st, 1833.

To the Commissioner of Circuit for the 15th Division, dated 1st February, 1833.

No. 754.
1793.
Reg. IX Sec. 10.
1803.
Reg. VI. Sec. 10.
1825.
Reg. VIII. Sec. 5.

I am directed by the Court to acknowledge the receipt of your letter of the 19th ultimo, and its enclosure, and in reply to inform you that they are of opinion that you are not competent, as commissioner of circuit, to fine a person under the regulation referred to by you (Section 5, Regulation VIII. 1825); but that, as regards the complaint against the nazir and peons of the magistrate's office, you possess, in your capacity of superintendant of police, the power of a magistrate in the punishment of false and malicious complaints.

February 1st, 1833.

No. 755.
1803.
Reg. LIII. Sec. 2, Cl. 7.
1817.
Reg. XVII. Sec. 8, Cl. 4.
1829.
Reg. XII.

From the Commissioner of the Saugor and Nerbudda Territory to the Register of the Sudder Nizamut Adawlut, Western Provinces, dated 24th January, 1833.

A case of an attempt at murder by poisoning having been committed for trial before me, I had intended to have referred the case for the orders of the Court, as directed in your letter of the 13th April 1832; but I shall delay doing so, till I receive a reply to this letter, for several reasons.

1st. It would appear by the Circular of the 7th May, 1824, that trials for administering poison with intent to rob alone should be sent for the Court's orders. The charge before me is for administering poison out of jealousy.

2d. By Section 4, Regulation XII. 1829, it would appear to have been the intention of the legislature, that the courts of circuit should decide cases of attempt of poison, and the Nizamut Adawlut to revise their orders in aggravated cases: but whether the courts of circuit may pass a sentence exceeding seven years' imprisonment seems dubious, though I am inclined to think, that the spirit of Regulation XII. 1829, is in favor of the practice.

To the Commissioner in the Saugor and Nerbudda Territory, dated 7th February, 1833.

I am directed by the Court of Nizamut Adawlut for the Western Provinces to acknowledge the receipt of your letter of 24th ultimo.

2. The Court observe that although the crime of administering poison with intent to murder when accompanied by robbery, burglary or theft, or attempt to commit the same, is especially provided for by Clause 4, Section 8, Regulation XVII. 1817; no specific punishment has been prescribed by any Regulation in force for the simple offence of administering poison with intent to murder, death not ensuing; this last mentioned crime comes consequently under the general rule laid down in Clause 7, Section 2, Regulation LIII. 1803, by which commissioners are empowered (and by Regulation XII. 1825 required) to pass sentence not exceeding seven years' imprisonment, the authority to call for the proceedings and enhance the punishment being reserved to the Nizamut Adawlut by Section 4, Regulation XII. 1829.

3. The 2d Section of Regulation XII. 1829, appears to the Court to refer solely to cases of wounding, and being a highly penal law, cannot be construed to extend to cases of administering poison.

The Presidency Court, on the 1st March, 1833, *concurred in this construction.*

February 7th, 1833.

Resolution of the Court of Sudder Dewanny Adawlut held at the Presidency, under date the 8th February, 1833.

No. 756.
1825.
Reg. II. Sec. 3

A question having arisen in a case decided by two judges, both of whom continue attached to the Court, whether on an application for a review of judgment such application should be submitted for the opinion of both of the judges, or whether the opinion of one for the admission or rejection of the review is final, the Court are of opinion, on due consideration and with reference to the rule laid down in the case of Musst. Ujgnasee regarding the admission of a review of judgment in the provincial court of Patna, that in such cases the petition of review should be laid before the judges who passed the decrees; and that in the event of a difference of opinion between them, as to the

admission or rejection of the review, the matter should be referred to one or more judges of the Court, until the question be determined by a majority of voices.

The Western Court, on the 15th March, 1833, concurred in this construction.

February 8th, 1833.

From the Officiating Commissioner of Circuit, 7th Division, to the Register of the Sudder Nizamut Adawlut, Western Provinces, dated 2d February, 1833.

No. 757.
1793.
Reg. IV. Sec. 6.
1803.
Reg. III. Sec. 7.

I beg that you will submit for the consideration of the Court, the accompanying copy of a letter from the magistrate of Banda, dated the 25th ultimo; containing two questions, first, whether in cases of bribery, a magistrate is authorized to compel the party said to have administered the bribe, to give evidence on oath, and secondly, whether it is lawful to compel a mahajun to produce books or accounts supposed to contain information relative to the charge.

2. It appears to me that no person ought to be required to give evidence on oath, touching a bribe alleged to have been administered by himself, except with a distinct understanding that he is not to be held legally responsible for his share in the offence. With respect to the second query, I believe it is the practice of all courts to require the production of accounts as evidence, and I see no reason to doubt the lawfulness of so doing. A court may of course compel a mahajun to give oral evidence, founded on that which his books may contain, and the production of the books is the readiest and most conclusive mode of obtaining the requisite information. Should there be no special rules applicable to these points, I request that I may be furnished with the Court's opinion on the subject.

From the Register of the Sudder Nizamut Adawlut, Western Provinces, to the Register of the Presidency Court, dated 8th February, 1833.

I am directed by the Court to transmit, for the purpose of being laid before the judges of the Presidency Court, the annexed copy of a letter received from the commissioner of the 7th division, under date the 2d instant.

2. The Court are of opinion that as the delivery of a bribe is a criminal act, and renders the person delivering it subject to a criminal prosecution as well as the receiver, a court of justice cannot compel a person to give evidence on oath touching a bribe alleged to have been administered by himself. Upon the second question referred by the commisioner, the Court observe that although no specific regulation exists on the subject, it has been the established practice of the Courts to call on mahajuns to produce books in evidence on cases pending before them, and they have reason to believe that such practice has been held by the Presidency Court to be unobjectionable. The Court therefore propose to inform the commissioner, with the Presidency Court's concurrence, that although the measure should be adopted with caution, and not unnecessarily, still the Courts possess authority to require mahajuns to produce their books in evidence,

when an inspection of them may be necessary for a full understanding of the merits of a case pending before them.

The Presidency Court, on the 8th March, 1833, concurred in this construction, referring in regard to the 2d question, to Construction No. 270, dated 26th March, 1817.

February 8th, 1833.

To the Judge of Zillah Jungle Mehals, dated 15th February, 1833.

No. 758.
C. O. 5 Nov. 1812.

The Court, having had before them your monthly civil statements for December last, observe that the moonsiff of Bhelaideha states that in certain suits on his file he cannot proceed until the expiration of six weeks. They presume this to arise from his having issued notices in these cases to the plaintiffs requiring them to appear, within the period of six weeks, to shew cause why their suits should not be thrown out on account of default. Should this be the case, the Court request that you inform the moonsiff that it is not incumbent on him to give so long a period for the appearance of the defaulting plaintiff, and that they consider eight days or a fortnight in ordinary cases a sufficient time to allow for this purpose.

February 15th, 1833.

From the Commissioner of Circuit, 15th Division, to the Register of the Presidency Court of Sudder Nizamut Adawlut, dated 2d February, 1833.

No. 759.
53 Geo. III C. 155, Sec. 55.

I have the honor to beg you will obtain for me the opinion of the Court on the following point.

2. The magistrate of Dacca has, I understand, committed for trial before the court of circuit a Mr. Wise, who has no license from Government for residence in his district, but who declares himself to be a West Indian, and therefore a British subject, not amenable to the native courts.

3. The question I wish to ascertain is, supposing this individual to be unable to prove that he is a British subject, which I suppose it will be regular to call upon him to do, am I to try him?

To the Commissioner of Circuit for the 15th Division, dated 15th February, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 2d instant, and with reference to the doctrine laid down in the case of Maudeville in the printed Reports of the Nizamut Adawlut, Volume 2, page 111, to state that unless Mr. Wise can prove that he is a British subject, you are competent to try him for any offence for which he may be committed.

February 15th, 1833.

From the Acting Magistrate of Shahabad to the Commissioner of Revenue and Circuit for the 10th Division, dated 23d January, 1833.

No. 760.
1810.
Reg. XX. Sec. 18.

I have the honor to solicit your instructions in the following case, in which neither the Regulations nor the Nizamut Reports inform me how to act.

2. A sepoy, belonging to the detachment at Buxar, shot and killed the havildar who was mounting guard at the Fort gate, and the question is, whether the case should be tried by the civil authorities or by a court martial.

3. From Regulation III. 1809 and Regulation XX. 1810, I should consider that the case ought to be taken up by the magistrate, but by the Act of Parliament (4 Geo. IV. Cap. 8, Sections 2 and 7,) and the Articles of War, Section 9, it would appear to be cognizable either by the magistrate or by a court martial, and perhaps it more properly belongs to the latter, as it involves a breach of discipline in addition to the crime of murder.

4. I observe some cases in the Nizamut Reports which come very near the present, but none which seems quite to apply, inasmuch as they do not involve a breach of discipline; particularly the cases of Khedoo Ram, page 334 of Volume 2, of Munoowur, page 128 of Volume 3, of Sheoadhur, page 199 of Volume 3, and of Ram Jeewun, page 209 of Volume 1, of the Nizamut Adawlut Select Reports.

5. The charge of the police in the Buxar *bazar* is vested in the magistrate, but the detachment to which the sepoy belongs, is of course under the commanding officer.

To the Commissioner of Circuit for the 10th Divison, dated 15th February, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 30th ultimo, forwarding copy of one from the officiating magistrate of zillah Shahabad, dated the 23d of the same month, and in reply to inform you that they are of opinion that under Section 18, Regulation XX. 1810, the officiating magistrate is competent to take up the case alluded to in his letter.

February 15th, 1833.

To the Officiating Judge of Zillah Ghazeepore, dated 22d February, 1833.

No. 761.
1814.
Reg XXIII. Sec. 76.

In continuation of my letter of the 22d February last, I am directed to inform you that under the provisions of Section 76, Regulation XXIII. 1814, the judge is competent to employ the principal sudder ameens in the same manner as other sudder ameens in the adjustment of accounts, or in the investigation of disputes, or special matters of account, fact or usage, connected with the execution of decrees passed in the judge's court; but that under the regulations in force no authority exists for referring to such officers applications for the execution of any other decrees than those passed in the courts of the sudder ameens and moonsiffs.

The Presidency Court, on the 15th March, 1833, concurred in this construction.

February 22d, 1833.

From the Judge of Zillah Futtehpore to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 16th February, 1833.

No. 762.
1832.
Reg. VII. Sec. 5, Cl. 2.

With reference to Clause 2d, Section 5, Regulation VII. 1832, I request the favor of your obtaining for me the opinion of the Court as to whether the principal sudder ameens, sudder ameens and moonsiffs should select the peons they may propose to employ for the execution of civil processes from the registered peons, who, previous to the new arrangements, belonged to the courts of the judge, sudder ameens and moonsiffs; or whether they are at liberty to nominate for the appointment of strangers. I beg leave to submit that if they are allowed to appoint new peons, a considerable number of old servants must necessarily be thrown out of employ.

To the Judge of Zillah Futtehpore, dated 22d February, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 16th instant.

2. In reply, that I am directed to inform you that under the terms of the regulation cited by you, the nomination of the muskooree peons rests with the subordinate judicial officers, and that the judge is required to select from among the persons nominated such number of those whom he may consider the fittest for the duty as may appear requisite. The Court observe that as the native judicial officers possess the power of appointing and removing the ministerial officers of their courts, there can be no objections to entrusting them with the authority to nominate the persons who will be employed in executing their processes.

The Presidency Court, on the 15th March, 1833, concurred in this construction.

February 22d, 1833.

To the Session Judge of Zillah Beerbhoom, dated 22d February, 1833.

No. 763.
Evidence to prove a confession.

With reference to the concluding paragraph of your letter of the 29th December last, submitting the proceedings on the trial of Putit Haree chowkeydar, I am directed to inform you that, unless the prisoner deny *in toto* having made *any*, his mofussil or foujdary confession or examination adduced in evidence against him, though not proved by the testimony of the subscribing witnesses, should be read and explained to him at the time of taking his defence, and his admission or denial of the same entered on the record. I am directed to add that if the subscribing witnesses are unable to prove a confession, the judge should call upon the person by whom it was written, and the police officer, magistrate or other officer before whom it was made, and by whom it is attested, to depose to any circumstances required to be known connected with it.

February 22d, 1833.

From the Judge of Zillah Juanpoor to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 16th February, 1833.

No. 764.
1831.
Reg. V. Sec. 9, Cl. 3.

I have the honor to request that you will be pleased to obtain for me the opinion of the Court regarding the rate of fees to be levied on exhibits and summonses which may now be filed in cases that were instituted before the introduction of Regulation V. of 1831. Clause 3, Section 9, Regulation V. of 1831, declares that the exemptions contained in Clause 2 shall not be held applicable to suits "instituted after" the date fixed for the operation of Regulation V. of 1831, but is silent regarding the rate of fees for suits now pending before the judge.

To the Judge of Zillah Juanpoor, dated 1st March, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 16th ultimo.

2. In reply, I am directed to inform you that the rate of fees to be levied on exhibits and summonses, which may be filed in cases instituted previous to the introduction of Regulation V. 1831, should be adjusted by the regulations applicable to such matters previous to the enactment of that regulation.

The Presidency Court, on the 29th March, 1833, concurred in this construction.

March 1st, 1833.

To the Judge of Zillah Bhaugulpore, dated 8th March, 1833.

No. 765.
1793.
Reg. IV. Sec. 25.
1803.
Reg. III. Sec. 26.

The Court, having had before them your letter of the 25th ultimo, requesting to be informed whether, in the event of a legal arrest, by a warrant issued from the civil court, and a forcible rescue from the custody of its officers, the magistrate, on proof of such rescue, is empowered to order the police forcibly to enter the house wherein the person rescued may be, and to apprehend him and forward him to the civil court; direct me to answer your question in the negative, and to observe that in the case supposed, the civil court should proceed against the offender agreeably to Section 25, Regulation IV. 1793.

The Western Court, on the 12th April, 1833, concurred in this construction.

March 8th, 1833.

Extract of a letter to the Commissioner of Circuit for the 13th Division, in reply to his letter of the 26th ultimo, dated 8th March, 1833.

No. 766.
Issue of general warrants declared illegal.

Para. 3. The Court are not satisfied with the explanation of the case of Agah Meean, No. 1 of statement No. 2. They are left from your report to infer that you directed that police officers should accompany Agah Meean for the purpose of assisting him to apprehend any persons he might point out as concerned in the dacoity in the house of Moonshee Abdool Kurreem, and if so, you have sanctioned the issue of a general warrant, which the Court hold to be illegal, and request you will immediately recall it.

March 8th, 1833.

To the Judge of Zillah Mynpooree, dated 8th March, 1833.

No. 767.
1817.
Reg. III.
1829.
Reg. X. Sch. B. Art. 9.
1831.
Reg. V. Sec. 9, Cl. 3.
1832.
Reg. VII. Sec. 7.

I am directed by the Court to acknowledge the receipt of your letter of the 25th ultimo.

2. In reply, I am directed to inform yon that the exemption from stamp duty under Regulation III. 1817, included all cases, in whatever courts tried, below 64 rupees. This was extended by Section 9, Schedule B, Regulation X. 1829, to cases not exceeding 150 rupees; by Section 9, Regulation V. 1831, cases tried before moonsiffs to whatever amount are exempt from stamp. There is no subsequent enactment effecting this last rule. Clause 3, Section 9, Regulation V. 1831, however enacts that no suits, however small the amount, which are instituted in the zillah court, shall be held exempt, whether eventually referred to the subordinate authorities or retained on the judge's file. Section 3, Regulation VII. 1832, prescribes the amount of stamp in cases instituted in zillah courts, viz. 4 rupees in cases above 1,000 rupees, and 1 rupee in original cases not above 1,000 rupees, as well as in appeals from sudder ameens and moonsiffs.

The Presidency Court, on the 29*th March,* 1833, *concurred in this construction.*

March 8*th,* 1833.

Extract of a letter from the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 15*th March,* 1833.

No. 768.
1819.
Reg. II. Secs. 22 and 27.

Para. 3. By Section 2, Regulation X. 1829, all such Regulations then existing as relate to the imposition, levying and collecting of stamp duties, are rescinded; and by Section 17 of the same enactment the rules laid down in Schedule A and B are to be observed in future. In Schedule B no exemption is to be found in favor of suits, either original or appeal, instituted in the established courts of justice. The present is an appeal preferred under Section 27, Regulation II. 1819, to set aside a decision of the revenue authorities; and it follows therefore that the pleadings and other papers are liable, as in all other cases, to the full amount of stamp duty laid down in Article 8, Schedule B, Regulation X. 1829, subject to the modifications of subsequent enactments.

4. Should the Presidency Court concur in this opinion, the construction will be adopted as a rule of practice.

The Presidency Court, on the 29*th March,* 1833, *concurred in this construction.*

March 15*th,* 1833.

From the Acting Magistrate of Zillah Jessore to the Register of the Presidency Court of Nizamut Adawlut, dated 7*th February,* 1833.

No. 769.
1824.
Reg. XV. Sec. 6.
1821.
Reg. III. Sec. 2, Cl. 5.
1829.
Reg. II. Sec. 4.

May I request you will procure me the opinion of the Nizamut Adawlut whether a magistrate has the power under Section 4, Regulation II. of 1829, to confirm, alter, or revise in appeal, the order or decision passed in a suit, under Regulation XV. of 1824,

by an assistant who, invested with the special powers, is competent to try summary suits of dispossession; or is his order subject to an appeal by a magistrate under restrictions similar to those contained in Section 6, Regulation XV. of 1824?

To the Acting Magistrate of Zillah Jessore, dated 15th March, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 7th ultimo, and in reply to inform you that they are of opinion, with reference to Clause 5, Section 2, Regulation III. 1821, a magistrate is competent under the general powers vested in him to confirm, alter, or reverse in appeal, the order or decision passed in a suit under Regulation XV. 1824, by an assistant, who, invested with special powers, is competent to try such suits.

The Western Court, on the 4th April, 1833, concurred in this construction.

March 15th, 1833.

To the Commissioner of Circuit for the 10th Division, dated 15th March, 1833.

No. 770.
1819.
Reg. VII. Sec. 6.

I am directed by the Court to acknowledge the receipt of your letter of the 8th instant, submitting the explanation of the acting magistrate of Shahabad as to the award passed by him against Hidayut Ali and others.

2. In reply, I am directed to observe that Regulation VII. of 1819, was never intended to have, nor has, any reference to the wages of a mokhtar: it applies to workmen and domestic servants only. The Court therefore request that you will direct the acting magistrate to stay all further proceedings against the parties concerned, and return the money levied from Imambuksh and Jeetoo Khan as their share of the wages of the mokhtar.

The Western Court, on the 12th April, 1833, concurred in this construction.

March 15th, 1833.

Extract from a letter, dated 22d March, 1833, addressed to the Session Judge of City Moorshedabad, in reply to his letter of the 16th idem.

No. 771.
1818.
Reg. VIII Sec. 10.
1831.
Reg. VII. Sec. 2.

Para. 2. In reply, I am directed to inform you that the Court concur generally in the observations contained in the 3d paragraph of your letter; but with reference to Section 10, Regulalion VIII. 1818, and your subsequent remarks regarding the powers of a session judge, they are of opinion that, had you arrived at the conclusion that the prisoners alluded to were notorious robbers of desperate or dangerous character, you were competent, under the section above quoted, and Section 2, Regulation VII. 1831, to have required them to furnish security for their future good behaviour, and in default thereof to have detained them in confinement.

March 22d, 1833.

From the Judge of Zillah Mynpooree to the Register of the Western Provinces, dated 18th March, 1833.

No. 772.
1814.
Reg. XXIII. Sec. 23.

Moonsiffs appointed under Regulation V. of 1831, being now allowed to execute their own decrees, I request to be informed whether it is still necessary for them to make a reference to the judge under the provisions of Section 23, Regulation XXIII. 1814, prior to requiring security or proceeding to attach the property of defendants in causes under investigation.

To the Judge of Zillah Mynpooree, dated 29th March, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 18th instant.

2. In reply, I am directed to inform you that as Clause 3, Section 8, Regulation V. 1831, declares that "the provisions contained in the existing regulations relative to the "trial and decision of suits already cognizable by moonsiffs, are equally applicable to "suits instituted before those officers under this regulation;" and as no special enactment exists rescinding the provisions of Section 23, Regulation XXIII. 1824, the Court are of opinion that moonsiffs are required to proceed as heretofore, making a reference to the judge previous to requiring security from defendants or proceeding to attach property in default of such security in cases still pending.

The Presidency Court, on the 26th April, 1833, concurred in this construction.

March 29th, 1833.

To the Officiating Commissioner of Circuit for the 3d Division, dated 29th March, 1833.

No. 773.
1829.
Reg. X. Sch. B. Art. 3.

I am directed by the Court to acknowledge the receipt on the 25th instant of your letter of the 5th instant, together with its enclosures.

2. The Court are of opinion that from the rules laid down in Schedule B, Regulation X. 1829, it appears to have been the intention of Government that both the application for the copy (of proceeding or order) and the copy itself should be on stamped paper: the stamp paper assigned for the application being of a different value from that on which the copy is to be written. Sections 3 and 7 of the Schedule seem to point out this construction as that which was intended by the Government; and this view of the subject is confirmed by Section 5 of the same Schedule, which requires that even exhibits shall be accompanied by a petition when filed on the proceedings of a regular suit: it is also declared in Section 3, that the copy shall be written on one side thereof only.

The Presidency Court, on the 26th April, 1833, concurred in this construction.

March 29th, 1833.

From the Magistrate of Zillah Mymensingh, dated 21st March, 1833.

No. 774.
1807.
Reg. IX. Sec. 19.
1828.
Reg. VIII. Sec. 2.

I have the honor to request that you will obtain for me the Court's opinion on the following question.

2. A magistrate being authorized by Regulation VIII. of 1828, in certain cases, to imprison for one year, and in failure of payment of a certain fine, for a further period of one year; so that the whole period of imprisonment shall not exceed two years, is he at liberty to use his discretion, under particular circumstances, in omitting the fine, and sentencing a prisoner at once to two years' imprisonment? The question is equally applicable in a different form to Section 19, Regulation IX. of 1807. I am induced to trouble the Court, from the circumstance of cases frequently coming before me, which call for the fullest punishment the magistrate can give, but to which the imposition of a fine does not appear to me very applicable; for instance, cases of "loot taraj" during the night, or even during the day, in which property to a considerable amount may be plundered, and cases of affray, in which to a man of any substance that part of the sentence which condemns him to imprisonment, is the only part carrying in it any punishment equal to his offence, as he considers the payment of one hundred or two hundred rupees as a mere trifle; in fact the same order, passed upon a rich and a poor offender, falls doubly heavy upon the latter, who is very often only the instrument of the former.

To the Magistrate of Zillah Mymensingh, dated 29th March, 1833.

In reply to your letter of the 21st instant, I am directed by the Court to inform you that a magistrate is not competent, under Section 2, Regulation VIII. 1828, to sentence a prisoner convicted of affray at once to two years' imprisonment.

March 29th, 1833.

No. 775.

1814. Reg. XXIII. Sec. 21, Cl. 2, and Sec. 22, Cl. 3.
1832. Reg. VII. Sec. 5.

From the Judge of Zillah Mynpooree, dated 23d March, 1833.

Considerable inconvenience being experienced by the moonsiffs in the investigation of suits, from the necessity of examining the persons who witnessed the service of notices on defendants, prior to proceeding to try the causes exparte, I request to be informed whether the Court of Sudder Dewanny Adawlut for the Western Provinces see any objection to the strict observance of the rules laid down in Clause 2, Section 21, and Clause 3, Section 22, of Regulation XXIII. of 1814, being dispensed with in cases where the processes are served by registered peons under the provisions of Section 5 of Regulation VII. of 1832, provided the moonsiff issuing the process is satisfied from the chupprassie's report that the notice was duly served.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 4th April, 1833.

I am directed by the Court to transmit, for the purpose of being laid before the judges of the Presidency Court, the annexed copy of a letter received from the judge of zillah Mynpooree, under date the 23d ultimo.

2. The provisions of Clause 2, Section 21, Regulation XXIII. 1814, which require the evidence of witnesses besides the person who served the process, have reference to the circumstance that the process of moonsiffs' courts, was then served either by the plaintiff himself or any other person whom he chose to employ for that purpose; under the present system of issuing process through registered peons the same necessity does not however exist, and the evidence of the peon may be considered sufficient unless there are grounds to suspect his statement. Mr. Turnbull is of opinion that under the existing law the moonsiff is competent to exercise his discretion; but Mr. Colvin considers the provisions of Clause 2 above cited to be imperative, and that the evidence of witnesses to the service of process of others than the peon serving it must be taken in every instance. The point is therefore referred for the decision of the Presidency Court.

The Calcutta Court, on the 3d May, 1833, concurred in the opinion expressed by Mr. Colvin.

April 4th, 1833.

From the Judge of Zillah Moradabad, dated 23d March, 1833.

No. 776.
1814.
Reg. XXVII. Sec. 29.

I solicit the favor of instructions from the Court respecting the payment of fees to the pleaders of pauper plaintiffs.

2. In all cases generally, it is provided, that on the decision of a suit the pleader shall receive the fees which may have been already deposited for him in the court by his client; the client, if successful, recovering the same from the opposite party.

3. It is also enacted by Section 29, Regulation XXVII. 1814, that the payment of the fees of pleaders deposited in the court shall not be stayed or postponed in consequence of the admission of an appeal.

4. In the event of a suit being brought to a successful issue by a pauper plaintiff, the payment of the fees of the pleader falls with the costs on the defendant, but no fees are deposited in the court, and the pleaders of this court imagine that they are entitled to enforce payment immediately by confining the person of the defendant in jail.

5. This course appears to me to be open to objection, as a pauper plaintiff may (and it is not very uncommon) sue an individual possessed of little property for a heavy sum of money; if he obtain a decree, the pleader may, should he not have it in his power to pay his fees, at once lodge him in the jail and thereby throw a considerable obstacle in the way of an appeal: indeed I think the immediate payment of the pleader of a pauper, by a wealthy person, when an appeal has been preferred, objectionable, for it must be obvious that in the event of the decision being reversed, the respondent, who is a pauper, can never restore to the appellant the money received by the pleader.

6. It was my wish in such cases that the payment of the fees of the pleader should be postponed until the final decision of the case in appeal; it is urged that this mode is contrary to the provisions of Section 29, Regulation XXVII. 1814, above noticed, and precedents in the time of former judges, in favor of imprisoning the defendant on the imme-

diate passing of the decree, have been quoted; I therefore solicit, not being aware of any circular orders on the subject, that I may receive the directions of the Court.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 4th April, 1833.

I am directed by the Court to transmit, for the purpose of being laid before the judges of the Presidency Court, the annexed copy of a letter received from the judge of zillah Moradabad under date the 23d ultimo.

2. The Court are of opinion that the law is rightly stated in the 2d and 3d paragraphs of the judge's letter, viz. that the payment of fees in pauper as well as other cases cannot be stayed on the ground that an appeal has been instituted from the first decision: and although there may be a liability to inconvenience in particular cases, the general rule appears to the Court sound and just; they see no reason therefore to advocate the proposed change in the existing practice of the courts.

The Presidency Court, on the 3d May, 1833, *concurred in this construction.*

April 4th, 1833.

To the Judge of Zillah Purnea, dated 6th April, 1833.

No. 777.

1814.
Reg. XXVIII. Sec. 6, Cl. 1.
Sec. 11, Cl. 1.

I am directed by the Court to acknowledge the receipt of your letter of the 21st ultimo, and in reply to inform you that under the existing laws the judge is not authorized to demand sureties for the appearance of the agent of a pauper female plaintiff, and that such agent cannot be committed to the jail on the suit, preferred through his agency, appearing unfounded, vexatious, or wilfully exaggerated.

The Western Court, on the 3d May, 1833, *concurred in this construction.*

April 6th, 1833.

From the Session Judge of Moorshedabad to the Register of the Presidency Court of Nizamut Adawlut, dated 16th March, 1833.

Government, prosecutor,

vs.

Omrao Singh and others.

Charge,—murder and wounding, and aiding and abetting in the affray.

No. 778.

Discretion vested in magistrates to appoint a public prosecutor.

It is not imperative on a magistrate to commit both parties in an affray.

With reference to my letter dated 19th February, 1833, I have the honor to state, in conformity with the circular order of 20th July, 1832, that in the case noticed above I have annulled the commitment made by the acting joint magistrate for the following reasons:

1st. Where in the same trial principals and accomplices are committed, they must be principals and accomplices in the same crime, and committed as such.

But in this case the principals are committed for murder and wounding, and the accomplices are committed for an affray in which a man was slain.

2d. In a case of murder, the heir of the deceased, if there be one, ought to claim redress as prosecutor.

But in this case, though the proceedings shew there are several near relations of the deceased who are competent to prefer a claim as prosecutor, the joint magistrate has made Government prosecutor.

3d. In cases of affray, the combatants on both sides must be put on their trial, the Government being prosecutor.

But in this case, though some of the prisoners are committed as aiding and abetting in an affray, neither their opponents nor the persons wounded therein are committed.

For me to say what prisoners should be committed, or for what crime, would in some measure be a pre-judging of the case; nor could I do so probably on what appears on the record without calling for more evidence. I have therefore cancelled the commitment and directed the joint magistrate to revise the proceedings, and to give such orders regarding the commitment of those whom he sees proper to put on their trial, and the crimes laid to their charge, as, with reference to the above remarks and further enquiry, he may find necessary.

To the Session Judge of City Moorshedabad, dated 6th April, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 16th ultimo, reporting that you have annulled the commitment made by the joint magistrate in the case of Omrao Singh and others.

2. In reply, I am directed to observe that, although the Court will not in the present instance interfere with your order, a magistrate is perfectly justified in exercising a discretion in appointing the Government pleader to prosecute in cases of murder, notwithstanding that there may be near relations of the deceased competent to prosecute; and that it by no means follows, that in every case of affray both parties should be committed for trial.

April 6th, 1833.

From the Judge of Zillah Purnea to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 25th March, 1833.

No. 779.
1810.
Reg. XIII. Sec. 2, Cl. 4.

With reference to paragraph 2 of my letter to your address dated the 30th November last, I have the honor to request the favour of being furnished with the orders of the Court regarding my competency to dispose of cases under Section 30, Regulation II. 1819, on which I have myself reported in my former capacity of collector. The cases of this nature are of the longest standing of any in Court, and I therefore feel desirous of having them disposed of.

To the Judge of Zillah Purnea, dated 12th April, 1833.

I am directed to acknowledge the receipt of your letter of the 25th ultimo, and in reply to inform you that the Court are of opinion you are competent to dispose of the cases therein referred to.

The Western Court, on the 10th May, 1833, concurred in this construction.

April 12th, 1833.

From the Officiating Judge of Zillah Shahabad, dated 19th March, 1833.

No. 780.

1793.
Reg. IV Secs. 22, 24 and 25.
Reg. V. Secs. 23, 25 and 26.
1803.
Reg III. Sec. 23, Sec. 25, Cl. 1 and Sec. 26
Reg. IV Secs 23, 25 and 26.
1831.
Reg. V. Sec. 28, Cl 1. and Sec. 16, Cl. 3.

I do myself the honor to request the favor of the Court's opinion on the following points:

First.—Agreeably to Sections 22, 24, 25, Regulation IV. 1793, the zillah judges were not empowered to forward to Government decrees adjudging forfeiture of lands, and to realize fines, in cases of resistance to or evasion of process, provided the defendant preferred an appeal to the provincial court within the time prescribed for lodging appeals. These Sections also declare the decision of the provincial court of appeal to be final, in all cases where the annual produce of the lands adjudged to be forfeited, or the jumma payable to Government, supposing the offender to be a Government farmer, or the amount of the fine to be levied, may not exceed one thousand sicca rupees.

Sections 23, 25, 26, Regulation V. 1793, enact that all decrees adjudging forfeiture of lands, or farms, or orders for fines, passed by the provincial court in the first instance, in cases of resistance of process, and where the amount of annual produce, or jumma, or fine may not exceed one thousand sicca rupees, shall not be appealable to the Court of Sudder Dewanny Adawlut.

I request therefore to know whether the powers vested as above in the provincial court, are to be considered as vested in the judges of those zillahs into which the provisions of Regulation V. 1831, have been introduced, and where the jurisdiction of the provincial court has ceased; or whether the judges must now await the period of appeal to the Sudder Dewanny Adawlut, in the same manner as, agreeably to Sections 22, 24, 25, Regulation IV. 1793, they were directed to await an appeal to the provincial court. I of course allude to cases where the value of the forfeiture calculated as above, or the amount of fine may not exceed one thousand sicca rupees. In all other cases the law appears clear enough.

Second.—Is the decree of a judge, passed in appeal from the decision of a principal sudder ameen, and after a full hearing in the presence of the parties, to be executed through the principal sudder ameen or by the judge? Clause 3, Section 16, Regulation V. 1831, enacts that "if, after perusal of the record of the original suit and the "petition of appeal in the presence of the appellant or his vakeel, the judge shall see "no reason to alter the decision appealed from, it shall be competent to him to confirm "the same, and to communicate the order for confirmation through the court from whose

"judgment the appeal was made, to the respondent, with a view to enable such respon-"dent to take immediate measures for the execution of the decree." In this latter case however, there are no costs of appeal to be realized, whereas in the former costs must be decreed and realized.

To the Officiating Judge of Zillah Shahabad, dated 12*th April,* 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 19th ultimo, and in reply to the first question to inform you that as by Clause 3, Section 28, Regulation V. 1831, all suits originally decided by the judge of a zillah, into which the provisions of Regulation V. 1831, have been introduced, are appealable to the Sudder Dewanny Adawlut, an appeal would lie from his decree adjudging forfeiture of lands or fines, in cases of resistance or evasion of process, without reference to the amount of the annual jumma, or produce, or fine; and that in such cases the judge should await the period of appeal to this Court in the same manner as by the enactments quoted by you, they were directed to await an appeal to the provincial court.

2. In reply to the second question the Court direct me to state that the decree of a judge passed in appeal from the decision of a principal sudder ameen must be executed under the general rules prescribed for the execution of decrees passed by the judge.

The Western Court, on the 10*th May,* 1833, *concurred in this construction.*

April 12*th,* 1833.

From the Judge of Mymensingh, dated 11*th March,* 1833.

No. 781.
1814.
Reg. XXIII. Sec. 10 Cl. 2.
1831.
Reg. V. Sec. 26, Cl. 5,

May I request of you to obtain for me the superior Court's opinion on the following points:

Is a magistrate competent to receive and act upon a charge of bribery, corruption or extortion against a moonsiff? or does it rest with the judge to determine whether he should be criminally prosecuted before the commissioner of circuit or session judge?

2. Should the latter be the case, would it be sufficient for the judge to direct the defendant to be committed on the proceedings held before him (as in cases of perjury), or would it be necessary for the magistrate to take the evidence *de novo* to satisfy himself that the evidence is sufficient to warrant the commitment of the defendant for trial before the commissioner of circuit or session judge?

3. I may add that I am borne out by Clause 2, Section 10, Regulation XXIII. 1814, in the opinion I have recorded that in the first instance such charges (against moonsiffs) should be made before the judge. It enacts "that no process shall be issued against a moonsiff who may be charged with corruption, &c. unless the judge shall be previously satisfied by sufficient evidence that there is reason to believe the charge to be well founded." I infer the evidence is to be taken before the judge in this instance, as also in the case of principal sudder ameens under Clause 5, Section 26, Regulation V. 1831, which is only an extension of the former rules regarding sudder ameens and moonsiffs to

principal sudder ameens; and further, if the evidence was not first taken before the judge, how could he exercise the powers vested in him under the provisions of the first, second and third Clauses of the Section just cited?

To the Judge of Zillah Mymensingh, dated 12th April, 1833.

I am directed to acknowledge the receipt of your letter of the 11th ultimo and its enclosures, and in reply to inform you that the Court are of opinion, with reference to Clause 2, Section 10, Regulation XXIII. 1814, that a charge of bribery, corruption or extortion against a moonsiff is cognizable in the first instance only by the civil judge, who, after the requisite preliminary enquiry, will either give or refuse his assent to a criminal prosecution, which, in the former case, should be conducted by the complainant before, and be disposed of by, the magistrate as in any other case of misdemeanour.

2. The Court direct me to add, that this is not to be considered as barring the right of the judge to direct the vakeel of Government to prefer a charge of bribery, &c. against a moonsiff, and to conduct the criminal prosecution on the part of Government, whenever he may deem this measure expedient for the ends of justice.

The Western Court, on the 17th May, 1833, *concurred in this construction.*

April 12th, 1833.

From the Commissioner of Circuit for the 13th Division, dated 25th March, 1833.

No. 782.
1816.
Reg. XXII. Sec. 19.
1817.
Reg. XX. Sec. 11, Cl. 3.

I have the honor to report for the Court's information that I have cancelled the commitment No. 2, of the calendar of cases presented to this Court for trial at the present sessions.

2. The prisoner is charged with attempting to extort money by demanding payment from the chowkeydars for authenticating their weekly certificates and refusing to perform this part of his duty without remuneration. I have directed the officiating joint magistrate to dispose of the case himself, under the provisions of Clause 3, Section 11, Regulation XX. of 1817.

To the Commissioner of Circuit for the 13th Division, dated 12th April, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 25th ultimo, and in reply to inform you that they approve of your annulment of the commitment of the prisoner alluded to, and to observe that, if the prisoner was a sudder bukshee, the provisions of Section 19, Regulation XXII. of 1816, as well as those quoted by you, would be applicable to the case.

April 12th, 1833.

From the Register of the Western Provinces to the Register of the Presidency Court of Nizamut Adawlut, dated 25th March, 1833.

No. 783.
1832.
Reg. VI. Sec. 4.

I am directed to communicate to you, for the purpose of being laid before the judges of the Presidency Court, the following opinion of this Court, containing a construction of

Regulation VI. 1832. Should the Presidency Court concur in the construction, the same will be published as a rule of practice among the subordinate courts of the Western Provinces.

2. The Court are of opinion that under the provisions of Section 4, Regulation VI. 1832, when a criminal trial is conducted with the assistance of natives in either of the forms laid down in Section 3 of the same Regulation, a difference of opinion between the presiding officer and the jury or assessors does not render a reference to the Nizamut Adawlut necessary; but the presiding officer is competent and required to pass final sentence under such a difference of opinion, under the same restrictions only as limit the issue of his sentence when he concurs in the verdict.

To the Register of the Nizamut Adawlut, Western Provinces, dated 12th April, 1833.

I am directed by the Presidency Court to acknowledge the receipt of your letter of the 25th ultimo, and to inform you that they concur in the construction of Section 4, Regulation VI. 1832, contained in it. At the same time they think the law should be altered, and that it should be made imperative on the presiding judge to refer the trial to the Nizamut Adawlut, whenever he may think the prisoner guilty in opposition to the verdict acquitting him or finding him guilty in a less degree or of a lower grade of crime, than he may consider to be established. They will communicate this opinion to Government when they submit their report on the Regulation, required by the 2d paragraph of the letter from the officiating secretary to Government in the judicial department, dated the 10th October last.

April 12th, 1833.

To the Officiating Judge of Zillah Tipperah, dated 19th April, 1833.

No. 784.
1831.
Reg. VIII.
1806.
Reg. II. Sec. 11.

I am directed to acknowledge the receipt of your letter of the 2d instant, and in reply to inform you that the Court are of opinion that if the prisoner be in confinement in execution of a summary decree, passed by a collector under Regulation VIII. 1831, that officer is competent to release him on his presenting a petition under Section 11, Regulation II. 1806, and proving his insolvency; the pwers here tofore vested in the judge in such cases having been virtually transferred to the collector by the provisions of the Regulation first quoted.

The Western Court, on the 17th May, 1833, *concurred in this construction.*

April 19th, 1833.

From the Judge of Zillah Furruckabad, dated 16th April, 1833.

No. 785.
1803.
Reg. II, Sec. 8.

Adverting to Section 8, Regulation II. 1803, I request the favor of instructions from the Court in the following case.

2. A suit has been filed, Nawab Hussen Alee Khan *vs.* Chote Beghum, (plaint 2557-5-4, rent of jahgeer) in which the defendant pleaded on the filing of the suit that

she was one of the nawab's dependants, (mootuwussil being the term in use here,) and the case was ordered as usual to be sent to the nawab for decision. The plaintiff how ever gave in a suwal stating that the nawab being a minor, all business was transacted by his guardian Nawab Ahmed Yar Khan, to whom the defendant in this case is related, and praying that the case may be retained in the zillah court.

Three other cases are pending, in which the same petition has been made, for the same reason.

To the Judge of Zillah Furruckabad, dated 26th April, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 16th instant.

2. In reply, I am directed to inform you that the circumstance of the nawab being a minor will not prevent the reference of the case in the usual manner: the decision will of course be given by the guardian of the nawab, instead of the nawab himself.

The Calcutta Court, on the 31st May, 1833, *concurred in this construction.*

April 26th, 1833.

To the Commissioner of Revenue for the 13th Division, dated 3d May, 1833.

No. 786.

Execution of a decree against an European British subject. 1793. Reg. XXVIII. Sec 2. 1803. Reg. XVIII. Sec. 2.

I am directed by the Court to acknowledge the receipt of your letter of the 16th ultimo, and its enclosures, and in reply to inform you that a decree passed against an European British subject is to be enforced in the same manner as one given against a native, and, with reference to the fact noticed by the deputy collector, that the bond prescribed by Section 2, Regulation XXVIII. of 1793, was not executed in the present instance, to observe that Section 107, Cap. 155, 53 Geo. III. renders the execution of such bond unnecessary.

May 3d, 1833.

From the Judge of Zillah Purnea, dated 20th April, 1833.

No. 787.

Personal property sold in execution of decrees of Court must be paid for on delivery.

There being no express rule laid down in the Regulations for the mode of recovery of sums of money from persons purchasing property at sales made by order of Court, I have the honor to request the superior Court's opinion regarding the course of proceeding to be adopted in the event of a person purchasing chattels or personal property and being allowed to remove it, and subsequently refusing to pay for the same, or restore the property. In such case can the recusant be proceeded against in either or all of the following modes ?

First.—Can he be proceeded against as for a contempt ?

Secondly.—Can he be committed to jail in default of payment, or restoration of property, as for a debt ?

Thirdly.—Can his property be attached, and sold for recovery of the amount of purchase money due by him ?

2. I am aware that the proper mode of conducting sales of moveable property would be to require payment before the articles were allowed to be removed; but not unfrequently, purchasers, especially when they are well known, are permitted, as a matter of favor, to take away goods before payment; and it is with respect to such instances, in which the indulgence is abused, that I am desirous of obtaining the Court's opinion.

To the Judge of Zillah Purnea, dated 3d May, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 20th ultimo, requesting to be informed as to the course to be pursued in the event of a person who has purchased chattels or personal property at a sale, and been allowed to remove them, subsequently refusing to pay for or restore the same.

2. The Court do not understand from your letter that any case of such refusal has actually occurred. They therefore deem it sufficient to state that in no instance should personal property be delivered up to the purchaser, until he has paid for it; and that if the nazir or other person entrusted with the sale, deliver the property to the purchaser and the latter refuse to make payment, it will be at his own personal risk. He will be compelled to make good the price, and will have to recover the same from the purchaser by the regular course of law.

May 3d, 1833.

From the Judge of the Dacca Court of Appeal, dated 18th March, 1833.

No. 788.
1814.
Reg. XII.

I request you will submit to the judges of the Sudder Dewanny Adawlut the enclosed papers, and I solicit the opinion of that Court as to the liability of the pension therein alluded to in execution of decree.

2. It is in my opinion equally liable with any other property the party might possess, and it is obviously contrary to equity that he should live on his pension in ease and idleness, setting his creditors at defiance. Moreover such application of pensions has hitherto been the practice and unobjected to by the revenue authority, and there can be no doubt that the receipt of the treasurer of this Court, countersigned by a judge, will be a " legitimate acquittance in justification of the disbursement."

3. As courts of justice are by the circular order of the 14th December, 1832, deprived of the power of enforcing any of their orders issued to a revenue officer which the Board of Revenue may direct him to disobey, and so far bound to submit to fiscal authority, I request the Sudder Dewanny Adawlut will, in the event of their thinking the pension available property as above stated, give this Court full instructions how to proceed to insure obedience to any precept issued on the subject to the collector.

From the Secretary of the Sudder Board of Revenue to the Commissioner of Revenue for the Division of Dacca, dated 13th April, 1832.

I am directed by the Sudder Board of Revenue to acknowledge the receipt of your letter bearing date the 19th ultimo, and to inform you in reply, without intending to express any opinion of the validity of Mahomed Hossein's claim to the pension therein referred to, which is now under consideration, that they cannot sanction the payment of any allowances of the nature in question by the revenue authorities to any party whatever except the individual to whom the Government have specifically assigned them. The courts of law have other and perfectly effective means of enforcing their decrees against the party liable; but the officers to whom the payment of pensions is entrusted have no discretionary powers, and their only legitimate acquittance in justification of the disbursement of the public money, is the receipt of the pensioners.

Register's Report, dated 24th April, 1833, on a letter received from the Judge of the Dacca Court of Appeal, dated 18th March, 1833.

The register having been directed to report what precedents are to be found in the Court on the subject of the attachment of a pension in satisfaction of a decree of court, begs leave to lay before the Court the following abstract of the only two cases which he has found:

Jyenarain Mookerjea, appellant,

versus

Bulram Rae, respondent.

Jyenarain Mookerjea, the appellant in this case, was desirous of having a pension, payable to respondent from the collectorship of Benares, attached, to satisfy the decree of this Court awarding to him the sum of rupees 950 12 6.

On the 31st October, 1827, the Benares Provincial Court refused to attach the pension, on the ground that it was contrary to the provisions of Regulation XII. 1814.

The matter coming before this Court with a return, Mr. C. Smith ordered, on the 14th November, 1827, that two-thirds of the pension then in deposit in the Benares collectorship, and two-thirds of what might afterwards fall due, should be paid over to appellant until the sum awarded to him should be paid.

On the 28th May, 1829, Mr. M. H. Turnbull—observing that the order of Mr. C. Smith, involving a reversal of the order of the Provincial Court, could not be legally passed by a single judge—ordered that it should be stayed, and being of opinion that the order for giving up the pension to the appellant was contrary to the provisions of Regulation XII. 1814, proposed the following order, and Mr. C. T. Sealy concurring with him, on the 1st August, 1829, it was issued to the Benares Provincial Court:

"Ordered, that the Provincial Court do not pay to the appellant any part of the "pension of the respondent, in satisfaction of the decree, without the respondent's "consent."

Kadir Ali Khan and others, heirs of
Akbur Ali Khan, petitioner,
versus
Moossummat Chowrassee, decree-holder.

The sum of 3205 rupees 8 annas being due to Moossummat Chowrassee, from the estate of Akbur Ali Khan, under a decree of Court, the judge of the city of Patna, on the 19th January, 1829, ordered that it should be realized from a moiety of the pension paid by Government to the heirs of Akbur Ali Khan. The Patna Provincial Court having confirmed the above order on the 25th April, 1829, the petitioner appealed to this Court.

Mr. Rattray, on the 16th September, 1829, on the principle which governed the decision in the case of Jyenarain Mookerjea versus Bulram Rae, proposed the following order, which was passed with the concurrence of Mr. M. H. Turnbull, on the 6th February, 1830—"Ordered, that the orders of the Lower Courts be reversed; that no "part of the pension be paid to the decree-holder; and that if any part have been paid "to her, it be paid back to the pensioners."

To the Provincial Court of Appeal for the Division of Dacca, dated 3rd May, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 18th March last and its enclosures, and in reply to forward to you the accompanying copies of five roobukarees as per margin, (those alluded to in the preceding report,) from which you will perceive that the Court have ruled that pensions granted by Government are not liable to attachment in satisfaction of decrees of court.

May 3rd, 1833.

From the Commissioner N. Division Doab, dated 24th April, 1833.

No. 789.
1833.
Reg. II.

With reference to the provisions of Regulation II. of the present year, and the order of Government dated 29th ultimo, abolishing the Provincial Courts of Appeal of Benares and Bareilly from the 1st proximo, I have the honor to solicit the Court's opinion whether the original and appellate jurisdiction which vests in my office by the provisions of Clause 2, Section 9, Regulation I. 1829, ceases and determines by the provisions of the above quoted regulation and order, or whether I shall proceed to dispose of the cases pending before me.

To the Civil Commissioner N. Division Doab, dated 10th May, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 24th April last, requesting to be informed whether under the provisions of Regulation II. 1833, the original and appellate jurisdiction of your Court has ceased or otherwise.

2. In reply, I am directed to inform you that under Section 3 of the above mentioned regulation, all Provincial Courts are deprived of original jurisdiction; they will continue

however to exercise appellate jurisdiction until such time as the Governor General in Council shall, under the powers vested in him by Section 4, abolish the courts in question. No order under the signature of the secretary in the judicial department having been yet issued to this effect with regard to your court, you will continue to exercise your authority as a Court of Appeal, referring to the zillah courts all matters of primary jurisdiction under the rule laid down in Section 3.

The Presidency Court, on the 7th June, 1833, *concurred in the construction.*

May 10*th*, 1833.

From the Judge of Zillah Furruckabad to the Register of the Sudder Dewanny Adawlut, dated 30*th April*, 1833.

No. 790.
1831.
Reg. V. Sec. 16, Cl. 3.

I have the honor to submit for the consideration of the Court the following question.

2. I should first advert to Clause 3, Section 16, Regulation V. 1831, and to your circular letter of the 24th August, 1832, paragraph 3d, as follows:

" On this point I am directed to observe that the rule contained in Clause 3, Section " 16, Regulation V. 1831, alters the rule before in force no further than to allow the judge " to confirm the decision of the lower court without calling on the respondent to attend; " consequently the same mode of practice is to be followed as heretofore, except that, as " no costs can be incurred by the respondent until he be summoned to answer to the " petition of appeal, security for costs need not be demanded from the appellant before " the respondent is called upon to answer. A previous perusal of the petition of appeal " and decree is not necessary to the admission of the appeal: nothing further being " required than to see that the prescribed period of appeal has not expired, and that the " petition of appeal is written on paper bearing the prescribed stamp."

3. I am getting through the business as fast as I can, nevertheless it will be about three months before the appeals filed during the past month will be decided. In certain instances the appellants have petitioned to be allowed, without waiting for the appeal to be looked over by the judge, to bring forward witnesses to prove their case.

4. It seems to me that it would be hardly fair to allow this, without giving notice to the respondent, who, on hearing that the case was to be proceeded in, would come to court, perhaps appoint a vakeel; which would subject him to some expence; in which case the old rule of demanding security from the appellant, would probably come into force.

5. The question therefore is—

1st. Should an appellant be allowed if he wish it, without waiting for the petition of appeal and decree to be read over, to bring forward any additional proof to support his case?

2nd. If allowed, should the respondent be called upon to attend, or not, until the judge was able to take up the case?

6. May I request the favor of your procuring me the decision of the Court on this question? At the same time I may observe that I hope in a few months to have matters in such train that the appeals will be weekly cleared off.

To the Judge of Zillah Furruckabad, dated 10*th May*, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 30th April last.

2. In reply, I am directed to inform you that an appellant should not be allowed to bring forward additional proof in support of his claim, before the petition of appeal and decree have been read over by the judge.

3. Under this construction a reply to your second query is rendered unnecessary.

The Presidency Court, on the 7*th June*, 1833, *concurred in this construction.*

May 10*th*, 1833.

To the Patna Provincial Court of Appeal, dated 10*th May*, 1833.

No. 791.
1833.
Reg. II. Sec. 3.

I am directed by the Court to acknowledge the receipt of your letter of the 24th ultimo, and in reply to inform you that the provisions of Section 3, Regulation II. 1833, should have effect from the date of its promulgation, i. e. its receipt by the Court; that the transfer of original suits should not be delayed for any further communication from the judicial department; and that decisions of such suits, passed by you after the date of the promulgation of the Regulation, are illegal.

The Western Court, on the 14*th June*, 1833, *concurred in this construction.*

May 10*th*, 1833.

To the Acting Magistrate of Cuttack, dated 17*th May*, 1833.

No. 792.
1829.
Reg. I. Sec. 3, Cl. 1.

I am directed by the Court to acknowledge the receipt of your letter of the 27th ultimo, and its enclosures, requesting their sanction to the dismissal of Soobul Chunder Bose, serishtedar of your Court; and in reply to inform you that the case does not, in the opinion of the Court, call for their interference. If the alleged misconduct of the serishtedar be such as to render him deserving of dismissal from office, the evidence to that effect should be submitted to the commissioner of circuit, who is competent under Regulation I. of 1829, to pass such orders as the nature of the case may require.

May 17*th*, 1833.

To the Judge of Dacca Court of Appeal, dated 31*st May*, 1833.

No. 793.
1833.
Reg. II. Sec. 3.

I am directed by the Court to acknowledge the receipt of your letter of the 6th instant, requesting to be informed whether you should retain or transfer to zillah Tipperah the case of Joydoorgah Chowdrayn and others, plaintiffs, versus Mussummat

Sonamunee and others, defendants, in which you have obtained the Court's permission to review the judgement passed by you.

2. In reply, I am directed to inform you that the Court viewing the case in the light of an original suit, which, by the provisions of Regulation II. 1833, you are precluded from trying, are of opinion that it should be transferred to the zillah court of Tipperah.

The Western Court, on the 28th June, 1833, concurred in this construction.

May 31st, 1833.

From the Officiating Judge of Zillah Meerut, dated 7th May, 1833.

No. 794.
1825.
Reg. VII. Sec. 3, Cl. 6.
Sec. 4, Cl. 4 and 5.

Much inconvenience having been experienced, from the collectors of this division having in several instances refused to carry into effect orders which had been issued from this court for the sale of landed property, situated in their respective jurisdictions, in satisfaction of decrees, I am induced to make the matter a subject of reference, and to request the favor of your furnishing me with the sentiments of the Superior Court as to whether the power of making enquiries into, and deciding upon, the rights of claimants to property for the sale of which orders have been issued, is vested in the collector; or whether he ought, whenever such claims may be preferred to him, to forward them with any evidence which may have been adduced in support of it, or which the records of his office may enable him to supply, for the information and orders of the Court.

2. My object in making this reference is more with the view of setting at rest a question which has been, previous to my taking charge of the office, a subject of long and unprofitable discussion, without subjecting myself to prolonged correspondence with those collectors who entertain different views as regards the construction of the various enactments on the subject, and which, more specially Clause 6, Section 3, Regulation VII. 1825, and Clauses 4 and 5, Section 4 of the same Regulation, clearly vest all enquiries on the subject in the judge; the revenue officer being a ministerial officer, and having no right either to call in question the court's orders or to postpone the sale of any lands which have been ordered by the judge, without receiving specific orders from him on the subject.

To the Officiating Judge of Zillah Meerut, dated 12th June, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 7th ultimo, representing the inconvenience arising from the refusal of the collector of your division to carry into effect the orders of your court for the sale of landed property, and requesting the decision of the Court as to whether the claims advanced for property advertised for sale under orders of a court are to be decided by the collector, or by the court directing the sale.

2. In reply, I am directed to inform you that, under the provisions cited by you, such claims come exclusively within the cognizance of the court ordering the sale, and

that in the event of such claims being preferred to the collector, it is incumbent on that officer to forward them to the court for decision, staying his proceedings until the further orders of the court are received.

The Presidency Court, on the 5th July, 1833, *concurred in this construction.*

June 12*th,* 1833.

To the Judge of Zillah Burdwan, dated 14*th June,* 1833.

No. 795.
1819.
Reg. VIII. Sec. 17, Cl. 7.
1832.
Reg. VII. Sec. 16, Cl. 1.

I am directed by the Court to acknowledge the receipt of your letter of the 21st ultimo, and in reply to inform you that petitions on the part of the defaulting putnee talookdars, whose tenures have been sold for arrears under Regulation VIII. 1819, previous to the enactment of Regulation VII. of 1832, to receive the excess of the purchase money above the amount of the balance for which the tenure was sold, should be presented to the judge who holds the surplus in deposit.

The Western Court, on the 19*th July,* 1833, *concurred in this construction.*

June 14*th,* 1833.

To the Judge of Zillah Moradabad, dated 14*th June,* 1833.

No. 796.
1831.
Reg V. Sec. 16, Cl. 3.

I am directed by the Court of Sudder Dewanny Adawlut for the Western Provinces to acknowledge the receipt of your letter of the 6th instant.

2. In reply, I am directed to inform you that the rule laid down in Clause 3, Section 16, Regulation V. 1831, is not applicable to principal sudder ameens to whom appeals are referred by the judge.

The Presidency Court, on the 5th July, 1833, *concurred in this construction.*

June 14*th,* 1833.

From the Officiating Judge of Cawnpore, dated 8*th June,* 1833.

No. 797.
1793.
Reg. III. Sec. 8.
1803.
Reg. II. Sec. 5.

I request you will obtain instructions for me from the Court whether suits can be entertained in the zillah courts for debts contracted in Calcutta, the obligations by which the debts are represented, such as shop bills, bonds, notes of hand, or receipts, being dated and executed in Calcutta ; a great number of persons, Europeans and natives, who hold such obligations being residents of Cawnpore, and the other parties who, were suits to be instituted, would appear as defendants, being also residents or occasional visitors of Cawnpore or have available property here. Costs of suit and vakeels' fees are so high that I consider it my duty to the public to make the present enquiry, lest, after incurring great expense, parties may ultimately find themselves in the situation of being nonsuited.

2. I do myself the honor to forward two documents which an intending suitor has brought to me, and who made the enquiry orally which I have submitted above. I request

they may be returned. P. Carapit is a servant of the king of Oude, and occasionally visits Cawnpore, and is a man of wealth.

Sicca Rupees 2,900. *Calcutta, 3rd February,* 1833.

Three months after date I promise to pay to Messrs. Middleton and Co. or order the sum of Sicca Rupees two thousand and nine hundred for value received.

(Signed) P. CARAPIT.

P. CARAPIT, ESQ. ..... Dr.

TO MIDDLETON AND CO.

1823. Feby. 3rd.—To a handsome large pearl necklace with diamond clasp, ... 2,200
" A pair of handsome diamond and drop earrings, ... 700

Sa. Rs. 2,900

To the Officiating Judge of Zillah Cawnpore, dated 14th June, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 8th instant.

2. In reply, I am directed to inform you that under the provisions of Section 5, Regulation II. 1803, suits of the nature described in your letter, can only be instituted in your court, where either the cause of action has arisen or the defendant resided as a fixed inhabitant at the commencement of suit in the zillah under your charge. The circumstance of the defendant being only an occasional visitor, or his merely having available property in Cawnpore, will not therefore subject him to your jurisdiction.

The Presidency Court, on the 5th July, 1833, *concurred in this construction.*

June 14th, 1833.

To the Judge of Zillah Burdwan, dated 14th June, 1833.

No. 798.
1831.
Reg. V. Sec. 9, Cl. 2.
1832
Reg. VII. Sec. 7.

I am directed by the Court to acknowledge the receipt of your letter of the 21st ultimo.

2. In reply to the question contained in the 1st and 2d paragraphs, I am directed to inform you that as by Clause 2, Section 9, Regulation V. 1831, pleadings, applications for filing exhibits and for the attendance of witnesses, and copies of decrees in suits tried by moonsiffs, need not be written on stamp paper, the Court are of opinion that petitions presented to moonsiffs under Section 7, Regulation VII. 1832, for the execution of their decrees, as well as vakalut-namehs filed in cases before them, should be received on plain paper.

3. In reply to the 3d paragraph, I am directed to refer you to the accompanying extracts from a letter addressed to the Court by the judge of Beerbhoom, under date the

13th August last, and the Court's reply dated the 31st of the same month. (See Construction No. 714, page 55 of this volume.)

4. On the subject of the 4th and 5th paragraphs the Court are of opinion that moonsiffs, in common with the other judicial officers, are competent to try the fact of possession of lakeraj land attached by them in execution of their decrees.

The Western Court, on the 19th July, 1833, concurred in this construction.

June 14th, 1833.

From the Register of the Western Provinces to the Register of the Presidency Court of Nizamut Adawlut, dated 17th May, 1833.

No. 799.
1831.
Reg. VI.

From the session statements of zillah Moradabad, for the month of December last, it appears that on the 11th December, 1830, five prisoners were convicted by the commissioner of the division of "maliciously wounding." This sentence was confirmed by two judges of the Presidency Nizamut Adawlut on the 26th November, 1831. Another prisoner (Dalla) was tried in December last, by the session judge of Moradabad; in the course of the trial one of the eye witnesses, upon whose deposition the former prisoners were convicted, denied his former statement, and affirmed that he did not recognize the accused as he had before asserted. He was committed for perjury, and as his present deposition throws considerable doubt on the former evidence, it has been recommended by the sessions judge that the former sentence should be revised; and it becomes necessary to decide in what court and how such a revision can be had.

2. The following general questions therefore arise:—

1st.—Whether this Court are competent to revise sentences in criminal trials passed or confirmed by the judges of the Presidency Court in cases connected with the Western Provinces.

2d.—Whether in making such a revision they are at liberty to revise with reference to the general merits of the case at large, or merely in as far as the propriety of the order passed may be affected by the new light which is thrown on the subject.

3. As the Court see great reason to doubt their authority to revise the sentences passed or confirmed by the Presidency Court, more especially while any of the judges concurring in the sentence still remain attached to that Court; they are desirous of learning the opinion of the Presidency Court on the above questions previous to adopting further measures.

To the Register of the Nizamut Adawlut Western Provinces, dated 14th June, 1833.

I am directed by the Presidency Court to acknowledge the receipt of your letter of the 17th ultimo No. 40.

2. In reply, I am directed to observe that as the jurisdiction of this Court over the province of Benares, and the ceded and conquered provinces, has ceased under Section 2, and been transferred to the Court of Nizamut Adawlut for the Western Provinces by

Sections 3 and 6 of Regulation VI. 1831, the judges are of opinion that the Western Courts possess the whole of the powers, in regard to the revision of orders and sentences passed by the Court at the presidency before the enactment of that Regulation, which could have been exercised by the latter previously to the separation of the jurisdictions.

June 14*th*, 1833.

To the Magistrate of Zillah Backergunge, dated 21*st June*, 1833.

No. 800.
Writ of assistance.

I am directed by the Court to acknowledge the receipt of your letters of the 4th, 7th and 10th instant, and their respective enclosures, requesting the Court's instructions as to the mode to be pursued by you in regard to a writ of assistance issued from the Supreme Court, in the case of Peter Jacob Paul versus John Demetrius Calogreedy and Euphrosyne his wife.

2. The Court have also had before them a letter from the sheriff of Calcutta dated the 13th instant, and a petition from Peter Jacob Paul, the plaintiff in the above case.

3. It appears from the papers before the Court that when a suit was pending in the Dacca Provincial Court, regarding the disputed succession to the estate of Alexander Panioty, Euphrosyne Calogreedy, daughter of the said Alexander Panioty, and her husband John Demetrius Calogreedy, executed an agreement making ever two annas of the five and half anna share of Pergunnah Chunderdeep (the said share being considered to consist of sixteen equal parts) and a house at Burrisaul, to John Panioty and his brothers, upon which a decree was passed on the 18th January, 1828, awarding the shares of the parties accordingly. John Panioty and his brothers therefore, being in possession of the said share and house under the decree of a court of competent jurisdiction, cannot, with any justice, be ousted therefrom in the execution of the decision of the Supreme Court, passed on the 13th of July, 1832, to which they were not a party, founded on a deed of mortgage executed by Euphrosyne and her husband on the 8th of October, 1831, in favor of Peter Jacob Paul, by which the previous agreement and decree would be rendered null and void. The mortgage is indeed, apparently, a collusive transaction entered into by the parties with that intention.

4. On this view of the case the Court are of opinion that you acted judiciously in not using forcible means to oust John Panioty and his brothers from the property in their possession; and that you should confine your aid and assistance to the sheriff's bailiff to preventing any breach of the peace in the execution of his duty, leaving the mortgagee, if he sees proper, to sue John Panioty and his brothers and the mortgagers, in the zillah court, for possession of that portion of the property claimed by him which is in the possession of John Panioty and his brothers under the decree of the Provincial Court.

June 21*st*, 1833.

To the Judge of Zillah Juanpoor, dated 5th July, 1833.

No. 801.
1831.
Reg. V. Secs. 5, 15 and 18.

I am directed by the Court to acknowledge the receipt of your letter of the 20th ultimo.

2. In reply, I am directed to inform you that under the existing regulations, cases in which a collector is a party, cannot be referred for decision to the native judicial officers.*

The Presidency Court, on the 2d August, 1833, *concurred in this construction.*

July 5th, 1833.

To the Judge of Zillah Bareilly, dated 5th July, 1833.

No. 802.
1814.
Reg. XXIII. Sec. 72.
Reg. XXVII. Sec. 20.
1831.
Reg. V. Sec. 18, Cl. 3.

In reply, I am directed to inform you that as the wukeels of the principal sudder ameen's and sudder ameen's courts are in fact wukeels of the judge's court, permitted by the judge under the provisions of Section 72, Regulation XXIII. 1814, and Clause 3, Section 18, Regulation V. 1831, to practise in cases before the subordinate tribunals, and as by the Section and Regulation first cited, the whole of the Regulations in force regarding the authorized wukeels of the zillah courts are applicable to the authorized wukeels employed in the courts of the sudder ameens, the wukeels of the sudder ameen's and principal sudder ameen's courts are equally competent with other wukeels of the zillah and city courts to claim fees for furnishing legal opinions on points of law, or in particular cases, which may be referred to them by the parties interested.

The Presidency Court, on the 2d August, 1833, *concurred in this construction.*

July 5th, 1833.

From the Session Judge of Zillah Rungpore, dated 17th June, 1833.

No. 803.
The absence of ownership in the thing stolen does not affect the guilt of the thief.

In this case the prisoner (charged with stealing a bull) was found guilty by the jury of having the property with intent to conceal and make away with it. They recorded their opinion, that the case did not amount to theft, in which opinion I concur, but at the magistrate's request (having previously offered to refer if he asked it) I have the honor to submit the case.

2. The bull had been dedicated to religion, and was let loose by the owner to devour other people's crops; and to commit any other mischief. Under these circumstances, the prisoner seems to have thought that it would be an advantage both to himself and the public if he abated the nuisance; accordingly he carried off the bull, and was taken up in the attempt to dispose of it at a market. As there is no ownership in any body, and as the animal was not in custody or keeping, either express or implied, the charge, I conceive, cannot be sustained. Herewith I enclose copy of the futwa, which I took to assist my own judgment.

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* The state of the law regarding Principal Sudder Ameens and Sudder Ameens has since been altered by Act No. XI. 1836.

To the Session Judge of Zillah Rungpoor, dated 5th July, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 17th ultimo, submitting a question arising out of a case of theft of a brahminy bull.

2. As the case in question is within your competency, the Court request that you will dispose of it in the usual manner. They at the same time direct me to observe that the fact of there being no ownership in any individual, does not affect the criminality of the person who is alleged to have taken the bull, which must depend altogether on the *animus* by which he was actuated.

July 5th, 1833.

From the Judge of Zillah Goruckpore to the Register of the Western Provinces, dated 6th July, 1833.

No. 804.
1831.
Reg. IX. Sec. 2, Cl. 2 and 4.
1832.
Reg. VII. Sec. 15.

Tirbenee Dutt, petitioner, in the case,
Rambuksh Rae, plaintiff,
versus
Omrao Puttuk, defendant.

I have the honor to acknowledge the receipt of a precept from the Court of Sudder Dewanny Adawlut for the Western Provinces, dated 11th May, in the case noted in the margin, with a copy of the Court's order in the said case.

2. To the orders of the Court in the case above noted, I beg respectfully to make the following objections.

3. The order in question was passed by a single judge of the court, merely upon the petition of the appellant, without a revision of the proceedings of the case The purport of the order is to reverse the decision of the zillah judge; to direct that an auction sale which had been held in accordance therewith should be upset, and that evidence be taken as to the truth of a statement, made by the appealing petitioner, styling himself the son of the defendant in the case.

4. The case is briefly this,—Rambuksh Rae, plaintiff, brought a suit against Omrao Puttuk, defendant, to recover the sum of 1058 rupees and 3 annas, principal and interest, being money advanced by the plaintiff to the defendant in a certain transaction. On the 25th April, 1831, a decree was passed in favor of the plaintiff upon a full investigation of the merits of the case for the full amount claimed in the plaint. From this decision no appeal was instituted.

5. On the 24th August, 1831, execution was sued out by the plaintiff. The defendant absconded. On the 22d December, 1831, the plaintiff petitioned for a sale of the defendant's property, which being complied with and the regular forms observed, three villages were advertised for sale on the 21st February, 1833. On the 29th December, 1832, a man named Tirbenee Dutt, stating himself to be a son of the absent defendant, without any power of attorney or authority to act on defendant's behalf, presented a petition, stating that subsequently to the afore-mentioned decree the plaintiff had made an arrangement with defendant; that he had received a certain portion of his claim, for which he had given a receipt; that a further portion he had received in presence of witnesses, promising to make over to him the decree, and that the remaining portion he, plaintiff, had voluntarily

excused the defendant. When this petition was read on the 3d January, 1833, by the acting judge, the receipt was examined and an order was issued to the nazir to produce the plaintiff that he might reply aye or no to its correctness. An order was at the same time sent to the collector to stay the auction pending the plaintiff's arrival. On the 12th February, 1833, the nazir made his return, and the plaintiff appeared before me. The plaintiff denied entirely the correctness of this, Tirbenee Dutt's statement, and the authenticity of the document purporting to be a receipt for 1,000 rupees granted by one Muhesh Rae, said to be plaintiff's son, to the aforesaid Tirbenee Dutt; the defendant in the case Omrao Puttuk never appearing. In consideration of the plaintiff's denial and of all the circumstances of the case I recorded my opinion that the validity of Muhesh Rae's receipt and other objections advanced by Tirbenee Dutt, could not be investigated in a mere process of execution of a decree obtained by Rambuksh Rae against Omrao Puttuk; and I therefore directed that the execution should proceed and the sale should take place, which it accordingly did.

6. Now my objections to the order described in the 3rd paragraph of this letter are three-fold:

First.—Clause 2, Section 2, Regulation IX. 1831, is, I believe, the only enactment which can be at all considered as giving legality to the order. In the said Clause there are two divisions; the former pointing out the authority of a single judge of the Sudder Dewanny Adawlut summarily to confirm the orders of the lower court: the latter stating the authority of that officer, in the event of his disapproving of the lower court's decision or order. I respectfully maintain that in the latter case no authority is given to the single judge to pass any order at all with regard to the decision without a revision of the whole of the proceedings of the case.

Secondly.—Supposing the single judge to have authority to pursue the course mentioned in the aforesaid division and clause without calling for the papers and revising the case, I would respectfully ask what is the course mentioned? What is the single judge competent to do? The enactment says, "It shall be competent to a single "judge to *issue an injunction* pointing out the irregularity, illegality or other defect "apparent in the proceedings, decision or order appealed against, and requiring that the "court by which the same may have been held or passed *shall revise the* case, and proceed "thereon in such manner as may appear conformable to justice and the regulations." Certainly to my mind no authority is here given to the single judge summarily to *reverse* the decision of the zillah judge, and to upset an auction sale under which a valuable estate has changed hands, and in the validity of which decision the interests of many are concerned.

But, *thirdly*, I submit that this case does not come under Clause 2 of the Section at all. The order against which the petitioner complained was recorded in execution of a decree passed in a regular suit, after a full investigation of its merits. After having ascertained the exact nature of the statement made by the petitioner, after having examined his documents and taken the statement of the decree holder in the matter, I recorded

my opinion that, *as a point of law and practice,* the petitioner's claim could not be investigated in a mere process of executing a decree to which he did not on the record appear to be a party. The case I submit comes strictly under Clause 4 of the Section and Regulation quoted above, with regard to which the enactment expressly states that " it shall " not be competent to a single judge to alter or reverse such decree or order."

7. I respectfully beg the opinion of the Court in full sitting on the points at issue.

8. The Court will perceive that I have referred the matter merely on the question of jurisdiction, without entering into any arguments in support of my view of its merits. If the Court shall decide that my opinion, as recorded in the order appealed against, is wrong; that a third party may, in the execution of a decree in a case finally settled, come in, and, on a miscellaneous petition, on a paper bearing a rupee stamp, claim to have his demand against the son of the decree holder investigated—which investigation is to involve the examination of evidence to a number of different points (as in this case to the three distinct points described in the petition, 1st, the validity of a receipt for 1,000 rupees, 2nd, the fact of a further sum having been given in the presence of other witnesses, and 3rd, that the decree holder had, before yet other witnesses, waived all claim to a sum due from defendant to him); and that such petitioner shall be entitled to have his case investigated summarily pending the execution of the other party's decree, it will be a decision of some importance as a precedent for future practice.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 19th July, 1833.

I am directed by the Court to transmit, for the purpose of being laid before the judges of the Presidency Court, the annexed copy of a letter received from the judge of zillah Goruckpore under date the 6th instant.

2. It is the intention of the judge of the Court, with whom the order alluded to by Mr. Currie originated, to revise his proceedings in the case; but the general question, as to the authority of a single judge of the Sudder Dewanny Adawlut to alter or reverse the proceedings of the zillah court in cases of this nature, still remains to be decided.

3. The Court view the order of the zillah judge which was reversed in this case as a proceeding in execution of a decree of his own court in an original suit; and they are therefore of opinion that the order in question does not come within the exception laid down in Clause 4, Section 2, Regulation IX. 1831, as supposed by the zillah judge (see paragraph 6 of his letter), and that a single judge of the Sudder Dewanny Adawlut was competent, under the provisions of Section 15, Regulation VII. 1832, to modify or reverse that order as might appear to him advisable.*

The Presidency Court, on the 16th August, 1833, *concurred in this construction.*

July 19th, 1833.

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* See a further letter on this subject, No. 839 of this volume.

Resolution of the Presidency Court of Sudder Dewanny Adawlut, under date the 19th July, 1833.

The following question having been put to the Court—

No. 805.

1814.
Reg. XXVI. Sec. 3, Cl. 9.

Adverting to Clauses 2 and 9, Section 3, Regulation XXVI. 1814, with reference to Section 18 of Regulation V. 1793, Section 8, Regulation XIII. 1808, (and to Section 8, Regulation II. 1801, and Section 11, Regulation II. 1805, rescinded by Clause 1, Section 3, Regulation XXVI. 1814,) and also to the provisions of Regulation IX. 1831, —is the ground for receiving and acting upon a summary appeal simply the dismissal of the suit, or refusal to admit the suit, *without investigation of the merits, on the default of the parties*, or will the dismissal of the suit, or the refusal to admit it without an investigation of the merits, *without default of the parties*, be considered sufficient to justify the Sudder Dewanny Adawlut in receiving and acting on a summary appeal? In other words, if no default has been shewn, and if there has been any investigation in the Lower Court, however insufficient or imperfect, will such investigation bar the interference of the Superior Court in a summary form?

The Court are of opinion that a summary appeal can be admitted *only* when the suit has been dismissed or rejected on the ground of delay, informality or other default, without an investigation of its merits—and that the words *or in opposition to the Regulations* used in Clause 9, Section 3, Regulation XXVI. 1814, apply to cases which may have been so dismissed or rejected on grounds not warranted by the Regulations, or to the omission, prior to the dismission or rejection of the suit, of any of the forms prescribed by the Regulations for calling on the party to attend and shew cause why his suit should not be dismissed, &c.

The Western Court, on the 6th September, 1833, concurred in this construction.

July 19th, 1833.

To the Judge of Zillah Furruckabad, dated 26th July, 1833.

No. 806.

Illegitimate children are considered as of the same country as their mothers.

I am directed by the Court to acknowledge the receipt of your letter of the 19th instant.

2. In reply to your 3d paragraph, I am directed to inform you that illegitimate children should be classed with their mothers, and must be considered British subjects, European Foreigners, or American, according as their mothers may respectively be British, Foreign European, or American.

The Presidency Court, on the 6th September, 1833, concurred in this construction.

July 26th, 1833.

To the Judge of Zillah Midnapoor, dated 2d August, 1833.

No. 807.

1793.
Reg. III Sec. 7.
1803.
Reg. II. Sec. 4.

I am directed by the Court to acknowledge the receipt of your letter of the 15th ultimo, requesting to be informed what mode of procedure you should adopt in receiving and trying two suits instituted for the recovery of sums said to have been taken as bribes by the serishtadar of the collector's office.

2. In reply, I am diricted to inform you that you should proceed in the same manner as in common actions for debt. Section 7, Regulation III. 1793, declares all natives amenable to the civil courts, and as no Regulation exempts the officers of collectors from their jurisdiction, they come within the intent of the rule.

The Western Court, on the 6th September, 1833, *concurred in this construction.*

August 2d, 1833.

From the Judge of Zillah Mynpooree, dated 15th July, 1833.

No. 808.

1793. Reg. XIV. Secs. 15, 19 and 21. 1803. Reg. XXVII. Secs. 23, 26 and 28.

Concluding that the construction on Section 23, Regulation XXVII. 1803, communicated by the register of the Presidency Court in a letter dated 27th May, 1825, addressed to the judge of Bundlecund S. division, (No. 386, page 159, Vol. I, of the Book of Constructions,) is equally applicable to suits instituted against farmers and securities under Sections 26 and 28 of that enactment, I request to be informed whether in cases under the last Section, the amount of fine claimed by the collector on the part of Government ought not to be specified in the plaint; otherwise I see no way of estimating the value of the suit until a final decision is passed, and the judge has no opportunity of hearing evidence on the part of Government as to the circumstances of the defendant, and the defendant, not knowing the amount claimed from him, has no opportunity given him either of acquiescing in his ability to pay it, or of adducing evidence in disproof thereof.

To the Judge of Zillah Mynpooree, dated 2d August, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 15th ultimo, regarding suits instituted against farmers and securities under Sections 26 and 28, Regulation XXVII. 1803.

2. In reply, I am directed to inform you that the former construction of the Presidency Court is applicable to suits instituted against farmers and their securities under Sections 26 and 28 of the Regulation above mentioned, that is, the proceedings must be written on stamped paper, the amount of which will be determined by the jumma of the estate from which the arrear of revenue is due.

3. It is of course beyond the power of the collector to specify any amount of fine claimed by the Government from a security, as in fact no such claim is advanced: the collector merely represents the circumstances of the resistance of process to the zillah court, and the amount of the fine is left to the discretion of that court on the fact being established to its satisfaction.

The Presidency Court, on the 30th August, 1833, *concurred in this construction.*

August 2d, 1833.

To the Joint Magistrate of Malda, dated 2d August, 1833.

No. 809.

One proved act of gross misconduct in a mooktear justifies his general rejection.

I am directed by the Court to acknowledge the receipt of your letter of the 19th ultimo, requesting to be informed, with reference to my letter of the 18th November,

1831, (No. 607, page 252, Vol. I.) when joint magistrate of Bograh, whether the prohibition against the employment of a mooktear convicted of gross misconduct is to be confined to the case in which his misconduct has been brought to light; and in reply to inform you that one proved act of gross misconduct is sufficient to warrant a general rejection of the mooktear.

The Western Court, on the 6th September, 1833, *concurred in this construction.*

2d August, 1833.

To the Judge of Zillah Mymensingh, dated 2d August, 1833.

No. 810.
1814.
Reg. XXVI. Sec. 4, Cl 2 and 4.

The Court, having had before them the case of Bhyrub Chunder Doss, petitioner, versus Kishen Madho, decided by you in appeal on the 12th December, 1832, direct me to communicate to you the following observations and orders.

2. It appears that the petitioner obtained a decision in his favor from the pundit sudder ameen on the 26th July, 1810, which was confirmed in appeal by the register on the 17th June, 1816; and that the judge, on the 16th July following, rejected a petition filed by Kishen Madho for a special appeal from the register's decree.

3. As under the regulations the rejection of an application for a special appeal is final, the whole of the orders subsequently passed in the case are illegal. If you are of opinion that there are grounds for admitting a special appeal from the decision of the register, you should apply to this Court for permission to review the order of the former judge of the 16th July, 1816.

4. The Court accordingly annul the order passed by you on the 12th December last, with all other orders passed by any other authority subsequently to the 16th July, 1816, and request that you will proceed in the manner above prescribed.

5. The Court further direct me to observe that the Court's proposition contained in their roobukaree in this case dated the 11th July, 1828, and in the register's letter of the same date, that Kishen Madho should solicit the register of the zillah court to apply for a review appears to have been erroneous as under the construction of Clause 2, Section 4, Regulation XXVI. 1814, (No. 216, page 69, Vol. I.) the Court are not authorized by the Regulations to empower a register to review his decisions.

The Western Court, on the 20th September, 1833, *concurred in this construction.*

August 2d, 1833.

From the Judge of Zillah Jessore to the Register of the Presidency Court of Nizamut Adawlut, dated 15th July, 1832.

No. 811.
1829.
Reg. X. Sec. 17, and Sch. B Art. 8.
1831.
Reg. V. Sec. 5, Cl. 3.

For the consideration and orders of your Court I submit copy of a petition presented by Ramtonoo Pal, and beg to be informed whether with reference to the Regulations noted in the margin, a moonsiff is empowered to try so important a case as that alluded to by the petitioner. Ramtonoo states that hitherto he has never paid more than 32 rupees per annum, whereas you will observe, the zemindar, Roy

Regulation V. of 1831, Section 5, Clause 3.
Regulation X. of 1829, Section 17, Schedule B. No. 8.

Gungadhur, claims 206 rupees 12 annas, in other words he demands (supposing the petitioner's account to be true) an increased yearly income of rupees 175 in perpetuity equivalent to a principal sum of rupees 1,500, or 2,000, calculating at the rates of interest current in Bengal. My own opinion is that suits of this value should be referred for trial to the principal sudder ameens; but without instructions I do not like to act on the impression, because by long custom such claims have been invariably calculated at one year's rental only, in this court, and I believe in all. As respects the stamp duties the practice is not perhaps objectionable, since the exact amount of the jumma can only be ascertained by a measurement and assessment of the lands in dispute, i. e. should it appear on investigation that the zemindar is entitled to a fresh settlement. It is different, however, with regard to the interests of the ryots or other subordinate tenants, and it seems to me that they should have the advantage of a principal sudder ameen's superior intelligence and experience in trying such questions, whenever the increased rental claimed may exceed 36 rupees per annum.

To the Judge of Zillah Jessore, dated 2d August, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 15th ultimo, and in reply to inform you that the suit alluded to by you, being for a sum of money not exceeding 300 rupees, is cognizable by the moonsiff under Clause 2, Section 5, Regulation V. 1831.

2. The Court do not approve of the suggestion contained in the concluding part of your letter as a general rule, but observe that you are competent, in the particular case in question, to refer the suit to the principal sudder ameen under Section 7 of the Regulation above quoted.

August 2d, 1833.

From the Officiating Commissioner of Circuit 10th Division, dated 24th July, 1833.

No. 812.
1812.
Reg. XX. Sec. 7.

I have the honor to report, for the information of the Court of Sudder Dewanny Adawlut, that on the occasion of my late circuit in this division, I inspected the register books of deeds in the zillahs of Sarun, Shahabad and Tirhoot. In the two former, they appeared to be kept up in conformity with the Regulations.

2. At Tirhoot the practice of registering mooktearnamahs still prevailed, an irregularity noticed in my letter to your address under date the 24th of September, 1831. I requested the judge to call for, from the register, and furnish an explanation of the continuance of this practice after the illegality had been pointed out, as stated in my letter above alluded to, and I have now the honor to submit a copy of the reply of the register of deeds, which perhaps will be deemed satisfactory by the Sudder Court.

3. I deem it incumbent on me at the same time to notice a practice that prevails in Tirhoot, which I conceive to be infinitely more objectionable, and of the legality of which I am doubtful, viz. that of registering deeds called, or rather miscalled, ijaranamahs,

(اجارہ نامہ) in a separate book kept for the purpose. The nature of the deeds I cannot better explain than by the following quotation of the purport of the last deed registered. " Meer Muttooah, aged about 26, binds himself over for the period of 85 years, " and his descendants for ever (نسلاً بعد نسل بطناً بعد بطن) for the sum of 18 rupees, to " Omrao Sing, vakeel of the civil court at Tirhoot."

4. In another, a person disposes of the services of the slave girl, and of her children for a term of 81 years, for the sum of 200 rupees; and the rest were generally of a similar purport.

5. My object in now noticing these deeds, is to obtain the opinion of the Court of Sudder Dewanny Adawlut as to the legality of such transactions being registered under Regulation XX. of 1812, or any other law enacted for the guidance of the register of deeds.

6. In my general report to Government I purpose commenting on the policy of any longer openly supporting, by the records and decisions of our courts, a monstrous system of slavery, perhaps the only relic of the barbaric operation of Mahomedan law, which has not been either modified or superseded by our more mild and civilized code.

To the Officiating Commissioner of Circuit for the 10*th Division, dated* 16*th August*, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 24th ultimo, reporting that you had examined the books of the offices of register of deeds in the districts of Sarun, Shahabad and Tirhoot, on the occasion of your late circuit of the division.

2. In reply, I am directed to observe that as deeds of the description alluded to in your letter are not specified in Regulation XXXVI. of 1793, or Regulation XX. of 1812, the registry of them is illegal under the prohibition contained in Section 7 of the Regulation last quoted; and to request that you will communicate this opinion to the judge of Tirhoot for the information and guidance of the register of deeds.

August 16*th*, 1833.

From the Judge of Zillah Purneah, dated 24*th July*, 1833.

No. 813.
1793.
Reg. III. Sec. 14.
1803.
Reg. II. Sec. 18, Cl. 3.

I have the honor to request the favor of your obtaining for me the opinion of the Court of Sudder Dewanny Adawlut on the points noticed below, regarding the rule of limitation laid down in Section 14, Regulation III. 1793.

2. A person lent another a sum of money. Before repayment of the debt the debtor dies, leaving as his heirs, a widow, daughter, mother, and paternal uncle's son, who inherit his property. The landed property however, in consequence of disputes in the family, is attached by the court under Section 16, Regulation V. 1812. The creditor, before the expiration of twelve years from the period of the cause of action, applies by a miscellaneous petition to the court, requesting that the person in charge of the property of the deceased debtor may be directed to discharge the debt from the proceeds of the estate. The court call upon the heirs of the deceased to know if they admit the debt, or have any objections to payment being made as requested. The cousin admits it, but

the mother, widow and daughter make no reply. The creditor then, some time *after* the expiration of twelve years, brings his action for recovery. I beg to be informed, first, whether under the express provisions of the enactment above quoted, the admission of the claim by the cousin can be considered as an admission of the truth of the demand by the defendant, so as to bind the whole of the heirs of the deceased debtor; and secondly, whether a miscellaneous application to a court of justice can be considered as a preferring of the claim within the meaning of the Section quoted.

To the Judge of Zillah Purneah, dated 16*th August*, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 24th ultimo.

2. As the case, out of which your first question arises, may come judicially before the Court, they decline giving any opinion on it, and desire that you will decide the point on your own judgment.

3. In reply to the second question I am desired to communicate to you the opinion of the Court, that a miscellaneous application to a court of justice cannot be considered as a "preferring of the claim" within the meaning of Section 14, Regulation III. 1793.

The Western Court, on the 6*th September*, 1833, *concurred in this construction.*

August 16*th*, 1833.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 23*d August*, 1833.

No. 814.
1833.
Reg. II. Sec. 5.

The point of law below laid down, having arisen in a case now pending before this Court, I am directed to request that you will submit the same for the opinion of the judges of the Presidency Court.

2. In this Court's resolution of the 27th April, 1832, in which the Presidency Court have since expressed their concurrence, it has been already determined that "the "Courts of Sudder Dewanny Adawlut cannot interfere on the receipt of petitions of "appeal against the decision of a zillah or city judge passed by the latter in appeal from "the decisions of sudder ameens and moonsiffs, and that this construction applies to cases "in which the decision of the zillah or city judge has been passed prior to the operation "of Regulation V. 1831, in the district in which the cause of action originated, as "well as to those passed subsequently."—(See Construction No. 688, page 41 of this volume.)

3. The question has now arisen whether by a parity of reasoning the Courts of Sudder Dewanny Adawlut are also precluded from taking up and acting on petitions of special appeal from the decisions of zillah and city judges, which had been presented and were lying undisposed of before the provincial courts at the time of their abolition, and have been transferred to the Sudder Dewanny Adawlut under the provisions of Regulation II. 1833.

4. The Court are of opinion that such petitions are cognizable by the Courts of Sudder Dewanny Adawlut under Section 5, Regulation II. 1833; and that those Courts are competent to admit or reject such special appeal, according as it may appear to them advisable in each case under the general regulations.

5. Should the Presidency Court concur in this interpretation of the law, it will be adopted in the Western Provinces as a future rule of practice.

The Presidency Court, on the 27th September, 1833, *concurred in this construction.*

August 23*d,* 1833.

To the Judge of Zillah Goruckpore, dated 23*d August,* 1833.

No. 815.
1814.
Reg. XXIII. Sec. 7, Cl. 1, 2, 3, 4 and 6.
1831.
Reg. V.

I am directed by the Court to acknowledge the receipt of your letter of the 15th instant, requesting the opinion of the Court regarding the applicability of Clauses 1, 2, 3, 4 and 6, Section 76, Regulation XXIII. 1814, to principal sudder ameens.

2. In reply, I am directed to inform you that although the Clauses in question are not expressly declared applicable to principal sudder ameens, the Court are of opinion that under the general spirit of Regulation V. 1831, they should be considered applicable to those officers in common with other sudder ameens.

The Presidency Court, on the 1*st November,* 1833, *concurred in this construction.*

August 23*d,* 1833.

From the Register of the Western Provinces to the Register of the Presidency Court, dated 23*d August,* 1833.

No. 816.
Magistrates are competent to remove chowdrees of trades and professions.

I am directed by the Court to transmit, for the purpose of being laid before the judges of the Presidency Court, the annexed copy of a letter from the commissioner of the 6th division regarding the authority of magistrates to remove the chowdrees of the various trades and professions.

2. The Court observe that although there is no regulation expressly authorizing the magistrates to exercise the power in question, it has nevertheless been the universal practice for them to exercise it; and they do not now see any sufficient reason for checking the practice. Should therefore the Presidency Court concur, they will communicate this opinion to the commissioner.

The Presidency Court, on the 27th September, 1833, *concurred in this construction.*

August 23*d,* 1833.

From the Acting Magistrate of Cuttack, dated 3*d August,* 1833.

No. 817.
1793.
Reg. IX. Sec. 5.
1793.
Reg. VI. Sec. 5.

I request to be instructed by the Superior Court, whether it would be a legal proceeding in me as magistrate, to try a case of bribery of a darogah in the salt department,

on the evidence taken before me on oath as salt agent, without summoning the prosecutor and witnesses again, and taking the whole of the depositions *de novo.*

The latter course would in the case which gives rise to this reference occasion considerable hardship to a number of individuals, who came from a distance to give their evidence before me as salt agent, and whom I was obliged to allow to return to their homes pending the preliminary investigation held by me in that capacity; and as exactly the same process would have again to be gone through, I would hope that, having conducted it myself in the first instance, I need only now as magistrate authenticate it.

To the Acting Magistrate of Cuttack, dated 23d August, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 3d instant, and in reply to inform you, that you are not competent as magistrate to try a case of bribery of a salt darogah on the evidence taken before you as salt agent.

August 23*d*, 1833.

To the Commissioner of Circuit, 13th Division, dated 23d August, 1833.

No. 818.
Correspondence with appellants in criminal cases.

I am directed by the Court to forward to you the accompanying copy of a letter from the officiating joint magistrate of Pubna, dated the 9th instant, on the subject of certain correspondence arising out of complaints preferred against him to you by Mr. Simson, an indigo planter in his district.

2. The Court are of opinion that you did not act judiciously in communicating by letter with Mr. Simson, and furnishing him with copies of the joint magistrate's explanations. Although correspondence with parties in criminal matters is not specifically prohibited by any regulation, the mode pointed out by the regulations for appealing from the orders of a magistrate to superior authority is clearly opposed to such a practice, which, if encouraged, independently of the appearance of placing the appellant and the magistrate on an equal footing, would lead, as it has done in the present instance, to a great deal of irrelevant and useless discussion.

3. The proper course for you to have pursued on the occasion, in the opinion of the Court, would have been to require Mr. Simson to make his application on the stamp paper prescribed by the Regulations; and, after calling on the joint magistrate for any explanation of his proceedings which might appear necessary, you should have proceeded to determine the question at issue, leaving the appellant to apply in the usual manner for copies of any papers connected with the case which he might wish to have.

August 23*d*, 1833.

From the Register of the Western Provinces to the Register of the Presidency Court of Nizamut Adawlut, dated 26th July, 1833.

No. 819.
1831.
Regs. VI. and IX.

I am directed by the Court to acknowledge the receipt of your letter of the 14th ultimo, (see construction No. 799, page 107 of this volume,) stating the opinion of the

Presidency Court with regard to the authority of this Court to revise orders passed by judges of the Presidency Court, in criminal trials.

2. In your letter it is merely stated that in the opinion of the Presidency Court, the Western Nizamut Adawlut possess the same powers in such matters, as were vested in the Presidency Nizamut Adawlut previous to the separation of the jurisdictions; as it appears, however, necessary to define the nature of those powers, the Court have directed me to transmit the following resolutions recorded under this date; these resolutions are grounded chiefly on Section 17, Regulation XXV. 1814, the concluding clause of which appears to recognize the authority of the full Court of Nizamut Adawlut to revise the proceedings of any of its members; a power which is the more necessary to insure uniformity of decision under the late regulations which have so greatly extended the authority of single judges of the Court; it is also requisite that the point of authority to revise should be at once settled in order to enable the Court to dispose of the case of Surrubjeet and others in which the legality of the former sentence has been called in question. Should the Presidency Court concur in the opinion therein expressed, the Court will adopt them as their guide on future occasions.

3. As connected with the subject under discussion the Court request you will call the attention of the Presidency Court to the minutes recorded in the case of "Kumul Mussalchee," page 477, volume II. Nizamut Reports.

Resolution of the Court of Nizamut Adawlut for the Western Provinces, under date the 12th July, 1833.

1. That the judges of the Nizamut Adawlut, Western Provinces, are competent, whenever it may appear to them advisable on the representation either of one of their own body or any other constituted criminal authority, to revise in full Court the proceedings of any one or more judges in any case connected with districts under their jurisdiction, as well as to modify or annul the sentence or order previously passed, either on the grounds of additional evidence or other circumstance throwing a new light on the case, or generally with reference to the previous decision; provided that no sentence passed in a criminal trial can be modified to the prejudice of the prisoner or prisoners included in it.

2. That this power may be exercised, whether the original sentence or order was passed by former judges of the Western Court, or by any of the judges of the Presidency Court of Nizamut Adawlut.

3. If the judge or one of the judges, who passed the original sentence or order be present, the revision should be made by him; provided, that if two or more judges concurred in the sentence or order, and any one of those judges be not present, the case must be brought before the whole Court, if it be proposed to modify or annul the sentence or order passed in it.

To the Register of the Court of Nizamut Adawlut, Western Provinces, dated 23d August, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 26th ultimo, forwarding a copy of resolutions which the Western Court propose to adopt, if

concurred in by the Presidency Court, regarding the authority of the Nizamut Adawlut to revise orders passed on criminal trials.

2. In reply, I am directed to observe that the first paragraph of the resolution would appear to require that not only the revision of a criminal case should be sanctioned, but that it should also be made by a full Court, and the Presidency Court are disposed to think it would be better to confine the first paragraph to declaring the competency of the Court collectively to authorize the revision, leaving the case to be revised either by one or more judges in the manner provided for by the 2d and 3d paragraphs.

August 23*d*, 1833.

To the Commissioner of Circuit for the 12*th Division, dated* 23*d August*, 1833.

No. 820.
C. O. N. A.
5th Dec. 1828.
1801.
Reg. III.

The Court have had before them a letter from the joint magistrate of Malda, dated the 9th instant, (copy of which is herewith forwarded,) and its enclosures, on the subject of the case of perjury struck out of the calendar, and concur in the opinion expressed by you regarding it. While the case under Regulation XV. of 1824 was pending before the joint magistrate, he might have made the commitment for forgery or uttering forged deeds. But as he referred the investigation of that point to the civil court, and as the sudder ameen who decided the civil case did not take any notice of the alleged forgery, it was clearly not competent to the joint magistrate, under the Circular Order of the 5th December, 1828. (No. 14, page 18, volume II. Baptist Mission Press edition,) to make the commitment, especially as the case was then pending in appeal before the judge.

3. I am at the same time directed to state that the Court being of opinion that the document, which forms the ground of the joint magistrate's reference, bears palpable marks of forgery, request that you will direct the joint magistrate to inform the parties before him that they are at liberty to apply to the civil judge who decided the case in appeal, for permission to prosecute before the criminal court, which permission the judge, with reference to the concluding part of the Circular Order of the 5th December, 1828, on an inspection of the document and a comparison of its date with that of the water mark, will doubtless grant. You will also be pleased to direct the joint magistrate to furnish the parties with a copy of this letter, to produce before the civil judge.

August 23*d*, 1833.

From the Judge of Zillah Purneah, dated 12*th August*, 1833.

No. 821.
1814.
Reg. XXVIII Sec. 5.

I have the honor to request the opinion of the Court of Sudder Dewanny Adawlut whether it is competent for a judge under the provisions of Regulation XXVIII. 1814, to reject an application to be allowed to sue *in formâ pauperis* when on the face of the petition it shall appear that the action cannot by any possibility be legally sustained; or

whether the judge must of necessity confine himself to the mere investigation of the ability or otherwise of the applicant to pay the costs of suit.

2. I make this application to the Court with reference to two petitions that have been presented to me: one is an application to be allowed to sue *in formâ pauperis* for recovery of a debt on bond, the cause of action having arisen more than twelve years ago, and therefore the suit is barred by the rule of limitations. In the second case a Musselman woman applies to sue as a pauper for right and possession of certain lands which she asserts in her petition are endowed. Now, *I believe*, by the Mahomedan law a woman cannot be vested with the Towleeut or management of such lands, and as for proprietary right she can have none; the only thing she can be entitled to being a share of the produce.

3. Should it be necessary for the judge to confine himself to the investigation of the ability or otherwise of the applicant to pay costs, I beg to be favored with the Court's opinion whether, on the petition of plaint being filed, the defendants might not be permitted to demur summarily on the ground of the illegality of the claim, or exaggerated valuation of the property claimed, before being called upon to deposit the whole amount of pleader's fees or incur the expenses of a regular suit. Should the points adverted to be decided in the plaintiff's favor, the investigation into the merits of the case might then be proceeded with. On the other hand the plaintiff might be nonsuited, and if requisite directed to frame his plaint correctly, and sue again.

To the Judge of Zillah Purneah, dated 30th August, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 12th instant, and in reply to inform you that in applications for permission to sue *in formâ pauperis* the judge should confine himself to the investigation of the ability or otherwise of the applicant to pay the fees required; and that, with reference to Section 5, Regulation IV. 1793, which prohibits the admission of any pleadings whatever, but those therein specified, the objections of the defendant to the plaintiff's statement of the cause of action cannot be heard summarily; but should, by analogy to the cases contemplated in Section 5, Regulation XIII. 1808, be offered *in answer to the plaint* in the first instance.

The Western Court, on the 20th September, 1833, *concurred in this construction.*

August 30th, 1833.

To the Session Judge of Zillah Hooghly, dated 30th August, 1833.

No. 822.
1831.
Reg. VII. Sec. 2.
C.O.N.A. 11th Feb. 1825.

I am directed by the Court to acknowledge the receipt of your letter of the 20th instant, and in reply to inform you that the Court consider you competent, under Section 2, Regulation VII. 1831, to dispose of the cases of insane prisoners agreeably to the rules contained in the 4th paragraph of the Circular Order of 11th February, 1825, the disposal of such cases being one of "the duties of the sessions."

The Western Court, on the 20th September, 1833, *concurred in this construction.*

August 30th, 1833.

To the Session Judge of Zillah Hooghly, dated 30th August, 1833.

No. 823.
1818.
Reg. VIII. Sec. 2, Cl. 2.
1831
Reg. VII. Sec. 2.

I am directed by the Court to acknowledge the receipt of your letter of the 16th instant, and in reply to inform you that they are of opinion that you are competent, under the provisions of Section 2, Regulation VII. 1831, to require persons acquitted by you of the specific charge on which they may have been tried, to furnish security for their good behaviour, on proof that they are notorious robbers of desperate character whom it would be dangerous to release without such security.

The Western Court, on the 4th October, 1833, *concurred in this construction.*

August 30th, 1833.

From the Judge of Zillah Rajeshahye, dated 10th August, 1833.

No. 824.
C. O. S. D. A. 25 Feb 1820.
1814
Reg XXIII. Sec. 52.
1817.
Reg. XVIII. Sec. 7, Cl. 3.

From the Court's circular letter of the 25th February, 1820, enclosing copies of a letter addressed by the Court to Government, dated 7th January, 1820, and of a letter addressed to the Court in reply, dated 14th February, 1820, regarding the disposal of the unclaimed property of persons dying intestate, and authorizing the levy of a commission of one anna per rupee on the proceeds of such property when sold, as a remuneration to the nazir, it appears that the commission abovementioned is sanctioned on the sale of "*lawarisee*" property alone; and I request to know if a judge has any authority to allow the above commission to the nazir on the following items, viz. sale of the property by the nazir of deceased persons, (not intestate,) as for instance in the case of the late Mr. G. Coombe, an indigo planter, whose property was sold here by the nazir, and the money remitted to the administrator of his will in Calcutta; 2ndly, on property sold by the nazir in liquidation of decree of court; 3rdly, on property sold by the nazir in satisfaction of sums embezzled by any public officer.

2. I cannot find any *Regulatton* authorizing the commission to be paid to the nazir in the above cases, and the sanction for receiving it on the sale of "*lawarisee*" property is only contained in a *letter* from Government; but I think as the moonsiffs are entitled to receive the commission of one anna per rupee on the proceeds of sale, that the nazir might also with propriety be allowed the same on every sale he should conduct.

To the Judge of Zillah Rajeshahye, dated 30th August, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 10th instant, requesting their opinion as to the right of the nazir of the civil court to a commission on sales in certain cases.

2. I am directed to observe that the sale by the nazir of the property of a deceased person, not intestate, is not analogous to that of the sale of lawarisee property. In the latter case, the property being at the disposal of Government, they are competent to grant the nazir a commission on the proceeds of the sale. In the former, the sale may

be said to be extra-official, for conducting which the nazir can claim no remuneration but what may have been agreed on by an arrangement with the administrator.

3. In reply to your second question, I am directed to refer you to the constructions Nos. 509 and 587 of the construction book ; and to observe, with reference to your third, which the Court presume relates to cases coming within the provisions of Regulation XVIII. 1817, that the same rule is applicable to sales of property in satisfaction of sums embezzled by public officers; such sales being, in fact, in execution of decrees or orders of the court.

The Western Court, on the 1st November, 1833, *concurred in this construction.*

August 30th, 1833.

To the Judge of Zillah Hooghly, dated 6th September, 1833.

No. 825.
1831.
Reg. V. Sec. 5, Cl. 3.

I am directed by the Court to acknowledge the receipt of your letter of the 23d ultimo, and in reply to inform you that suits for the property or possession of land held exempt from the payment of revenue, are not, under the provisions of Clause 3, Section 5, Regulation V. 1831, cognizable by moonsiffs, although the circumstance of the land being rent-free or exempt from the payment of revenue may not be disputed by the parties.

The Western Court, on the 4th October, 1833, *concurred in this construction.*

September 6th, 1833.

From the Commissioner of Circuit, 13th Division, to the Register of the Presidency Court of Nizamut Adawlut, dated 12th August, 1833.

No. 826.
Recognizance by a European British subject to keep the peace.

Several instances of disputed possession between European indigo planters having lately occurred in the Pubna district, which has rendered the precautionary measure of taking security from the parties to keep the peace necessary, and it being doubtful whether or not a magistrate can require security, beyond the amount of penalty he is authorized to levy from a European, under the provisions of the 53d of George III. Chapter 155, Section 105, I have to request the Court will favor me with their opinion and orders on the subject for my guidance.

To the Commissioner of Circuit for the 13th Division, dated 6th September, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 12th ultimo, requesting to be informed whether a magistrate can require security to keep the peace from a European beyond the amount of penalty, which he is authorized to levy under the provisions of 53 Geo. III. Cap. 155, Section 105.

2. Your question appears to arise from an idea that the amount of the penalty of bond is to be levied, in the event of a breach of the peace, by the magistrate. The Court direct me to refer you to the Circular Order issued by Government on the 9th June,

1830, to the commissioners of circuit on this subject,—whence you will perceive that the only proceeding for the forfeiture of recognizances to keep the peace, is in the Supreme Court, consequently the amount of the penalty of such recognizances is not affected by the provisions above quoted.

September 6th, 1833.

From the Judge of Zillah Mynpooree, dated 15th July, 1833.

No. 827.

Salaries of public officers may be attached in execution of decrees of Court, but not pensions granted by Government.
1814.
Reg. XII.

I request you will ascertain from the Court of Sudder Dewanny Adawlut, Allahabad, whether the salaries of public servants when due can be considered as property belonging to them, and as such liable to attachment in satisfaction of decrees, and whether the courts of justice can compel the disbursing officers to remit the amount to them.

2. It has been the practice of this court for many years, on the application of plaintiffs for the realization of sums decreed in their favor against individuals receiving either pay or pensions from Government, to send requisitions either to the collector, magistrate, or commanding officer, as the case might be, directing that the salary or pension in whole or part be remitted to the court for the liquidation of the demand against the individual. Requisitions of this nature have also been made by me through the judges of other zillahs to the magistrates of those districts, and the authority of the court in this respect hitherto has never been questioned.

3. Mr. Fraser, the officiating magistrate and collector of this district, now objects to carry such orders into execution, on the ground that the salaries are not the property of the individuals until the money is actually received by them. Accompanying are two roobukaries, one from the collectorate, the other from the Foujdary Court; in both the objection above stated is set forth, but in the former Mr. Fraser complies with the orders of the court, considering himself obliged to do so by Section 39, Regulation XXVII. of 1803; in the latter he refuses, there being no enactment requiring magistrates to obey the orders of the civil court.

To the Judge of Zillah Mynpooree, dated 9th August, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 15th ultimo, regarding the attachment of the salaries of public servants in execution of a decree.

2. In reply, I am directed to state that any sum of money actually due to a public servant, on account of salary, is liable to attachment, in the same manner as other property; you are therefore at liberty to attach such money, and to call on the disbursing officer to assist you in effecting the attachment, and such disbursing officer is required to give his assistance. Should the amount of salary actually due be insufficient to satisfy the decree, process can be immediately issued against the person of the defendant.

To the Register of the Court of Sudder Dewanny Adawlut, Western Provinces, dated 6th September, 1833.

I am directed by the Presidency Court to acknowledge the receipt of your letter of the 9th ultimo, and its enclosures, relating to the attachment of the salaries of public officers in execution of decrees.

2. In reply, I am directed to inform you that the Presidency Court concur in the letter which the Western Sudder propose to address to the judge of Mynpooree in reply to his of the 15th July last, and, with reference to the attachment of pensions, alluded to by the zillah judge in the 2d paragraph of his letter, to forward the accompanying copies of correspondence with the Provincial Court of Dacca on the subject.

Copy of a letter from the judge of the Provincial Court of Dacca, dated the 18th March last, and of its enclosures.

Copy of a letter addressed to him in reply on the 3d May last, and of the Persian roobukaries therein mentioned.*

September 6th, 1833.

Extract of a letter from the Commissioner of the 11*th Division to the Register of the Presidency Court of Nizamut Adawlut, dated the* 10*th August,* 1833.

No. 828.
1832.
Reg. VI.

Para. 6. I would also beg to be informed by the Court what is to be done in the case of a postponed trial commenced before a jury, where it may be impracticable from death or other cause to procure the attendance of all persons composing the jury.

To the Commissioner of the 11*th Division, dated* 13*th September,* 1833.

With reference to the concluding paragraph of your letter of the 10th ultimo, submitting the proceedings on the trial of Bunseeram and others for plundering, I am directed by the Court to inform you that in the case supposed by you, new jurors should be appointed in the room of those whose attendance cannot be procured; and that the former evidence should be read over to them and fresh evidence taken, in the same manner as formerly, when a postponed trial came on before a circuit judge and law officer, who did not sit on the original trial.

The Western Court, on the 4th October, 1833, *concurred in this construction.*

September 13*th,* 1833.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 20*th September,* 1833.

No. 829.
1825.
Reg. VII.

I am directed by the Court to transmit, for the purpose of being laid before the Presidency Court, the annexed extract, paragraph 4, from a letter received from the judge of zillah Furruckabad, under date the 13th instant.

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* See construction of 3rd May, 1833, No. 788, page 99 of this volume.

2. The Court are of opinion that the practice alluded to in this extract, of ordering a resale of property, on the ground that the sum realized has, for special reasons, been extremely small, is illegal: the judge is competent to take every precaution to prevent the sale of property for less than its marketable value, but after the sale has been once closed and the bidder being given to understand that he is the purchaser for the sum offered, the property cannot on this ground be again offered for sale, having become the right of the purchaser. Should the Court concur in this construction of Regulation VII. 1825, it will be communicated to the judge of Furruckabad for his future guidance.

The Calcutta Court, on the 18*th October*, 1833, *concurred in this construction.*

September 20*th*, 1833.

From the Register of the Court of Sudder Dewanny Adawlut for the Western Provinces, to the Register of the Presidency Court, dated 8*th February*, 1833.

No. 830.

1793. Reg. XV. Secs. 10 and 11. 1798. Reg. I. Sec. 2. 1803. Reg XXXIV. Secs. 9, 10 and 12.

I am directed by the Court to transmit, for the purpose of being submitted for the perusal of the judges of your Court, the annexed copy of a letter under date the 21st ultimo, received from the judge of zillah Futtehpoor.

2. The question referred by the judge of zillah Futtehpoor is, whether in a case of simple mortgage, the mortgager, after the expiration of the term of mortgage, may, in paying or depositing the sum borrowed, claim to obtain possession of the property mortgaged, by summary process of the civil court.

3. On referring to the reports of the Presidency Court, (page 3, volume III.) the Court observe that in the case of Kurta Ram and another versus Afzul Ali, the summary decisions of the additional register, for giving possession to the assignee of the mortgager under similar circumstances, was upheld; but from the note appended to that case and the reference made to Regulation I. 1798, and the Circular Order, 22d July, 1813, it may be inferred that the mortgage was of the nature of a bye-bil-wufa or conditional sale, regarding which under that circular order no doubt can be entertained. The Court request to be informed whether the mortgage was actually of that description; and also, whether any general rule has hitherto been adopted by the Presidency Court with regard to the admission of summary claims to obtain possession in cases of simple mortgage.

To the Register of the Western Provinces, dated 29*th March*, 1833.

I am directed by the Presidency Court to acknowledge the receipt of your letter of the 8th ultimo, requesting to be informed whether the mortgage bond, alluded to in the case of Kurta Ram Rai and another versus Afzul Ali, (in page 3, volume III. of the Select Reports of the Sudder Dewanny Adawlut,) was a deed of mortgage and conditional sale, or of simple mortgage, and further whether any general rule has hitherto been adopted by the Presidency Court with regard to the admission of summary claims to obtain possession in cases of simple mortgage.

2. In reply to the first question I am directed to state, that it is not distinctly stated in the proceedings, whether the mortgage was conditional or simple, and that the fact cannot be ascertained, as the bond is not with the proceedings, having apparently, if filed, been returned to the party, as is usual in summary cases. The case however having arisen in the zillah court of Ghazeepore, the Western Court may be able to ascertain the fact from the zillah judge.

3. With regard to the practice of this Court, I am directed to state that having inspected the proceedings in several summary cases of mortgage, I have been unable to find any case in which the mortgage appeared to be decidedly simple; the return of the bonds precluding the possibility of ascertaining the fact. The Presidency Court will be glad to learn the opinion which the Western Court may form in regard to the case alluded to in the 2d paragraph of this letter.

Extract of a letter from the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 20th September, 1833.

Para. 5. The Court direct me to take this opportunity of replying to your letter of the 29th March last, regarding simple mortgages. As suggested in that letter, application was made to the judge of zillah Ghazeepore for the original bond in the case of Kurta Ram and another versus Afzul Ali; but it had been returned to the party and no copy was forthcoming. On reference however to the printed book of constructions (No. 277, page 99 of vol. I.) the Court find that on the 9th July, 1817, the Presidency Court held that "there was no provision in the Regulations for a summary suit, in cases brought before the civil courts under Sections 9 and 10, Regulation XXXIV. 1803, which relate only to simple mortgage." The Court are disposed to concur in the interpretation of the law, and will cause it to be adopted as a rule of practice in the Western Provinces should the Presidency Court view the construction in the same light.

The Presidency Court, on the 18th October, 1833, *concurred in this construction.*

September 20th, 1833.

To the Register of the Nizamut Adawlut, Western Provinces, dated 20th September, 1833.

No. 831.
1807.
Reg. IX. Sec. 3.
1817.
Reg. XX. Sec. 25, Cl. 1.
1825.
Reg. IV. Secs. 2 & 4.

I am directed by the Presidency Court to acknowledge the receipt of your letter of the 12th July last, relating to the power of a magistrate to demand security to keep the peace, whenever there may appear grounds to warrant the measure.

2. In reply, I am directed to inform you that the Presidency Court do not conceive that power to be vested in a magistrate by the Regulations.

3. They direct me to observe that by Section 3, Regulation IX. 1807, the magistrates are authorized, on a complaint being preferred against any individual, to call upon him to give security to keep the peace, while the charge is under examination. By Clause 11, Section 25, Regulation XX. 1817, police darogahs may, in cases of manifest necessity, require security to keep the peace from persons, apprehended, which

as in the former case, is to remain in force while the charge preferred against him is under examination. By Section 2, Regulation IV. 1825, the criminal courts are competent, on the conviction of an individual of any specific offence, to require from him a moochulka or penal recognizance, to keep the peace, and, in cases of an aggravated nature, to demand security in addition to the moochulka; and by Section 4 of the same Regulation the magistrates may take moochulkas to keep the peace from persons not convicted of a specific offence.

4. Connecting the provisions quoted, the Presidency Court conceive that every necessary precaution has been adopted in the Regulations for the preservation of the peace generally, and towards particular individuals: nor do they think it would be proper further to extend the power of the magistrate.

The Western Court, on the 15*th November*, 1833, *concurred in this construction.*

September 20*th*, 1833.

To the Judge of Zillah Tirhoot, dated 27*th September*, 1833.

No. 832.
1831.
Reg. V. Sec. 3.

I am directed by the Court to acknowledge the receipt of your letter of the 10th instant, and in reply to inform you that the Court do not consider you competent to remove a moonsiff from one jurisdiction to another without a reference, through the commissioner, to them.

The Western Court, on the 18*th October*, 1833, *concurred in this construction.*

September 27*th*, 1833.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 27*th September*, 1833.

No. 833.
1814.
Reg. XXIII. Sec. 47.
1831.
Reg. V. Sec. 7.

I am directed by the Court of Sudder Dewanny Adawlut for the Western Provinces to transmit, for the perusal of the Presidency Court, the annexed copy of a letter received from the judge of zillah Bareilly under date the 14th instant.

2. In reply to the 2d paragraph of the judge's letter, the Court propose to inform him that as the object of Government in the late arrangement was, that cases not exceeding 300 rupees in amount should be decided by officers receiving a salary of 150 rupees a month, and near to the homes of the parties, the general practice of referring such suits to sudder ameens must be considered objectionable, especially as the establishment of moonsiffs was framed so as to admit of all such cases being tried by them, and no such assistance from the sudder ameens ought to be required.

3. Section 47, Regulation XXIII. 1814, however being still in force, such cases may, on special reasons, to be assigned by the judge in each case, be referred to sudder ameens or principal sudder ameens.

The Presidency Court, on the 18*th October*, 1833, *concurred in this construction.*

September 27*th*, 1833.

To the Officiating Judge of Zillah Jungle Mehals, dated 4th October, 1833.

No. 834.
1832.
Reg. VII. Sec. 3.

I am directed by the Court to acknowledge the receipt of your letter of the 19th ultimo, No. 111 of 1833.

2. In reply, I am directed to inform you that the Court are of opinion that appeals to the judge from the decisions of registers and principal sudder ameens not being among the exceptions contained in Section 3, Regulation VII. 1832, the pleadings in *all* such cases should be written on stampt paper of the value of four rupees.

The Western Court, on the 8th November, 1833, *concurred in this construction.*

October 4th, 1833.

Extract from a letter, addressed to the Session Judge of Zillah Jessore, under date the 4th October, 1833, *in reply to his letter of the 24th of the preceding month.*

No. 835.
1832.
Reg. VI.

Suroop Sirdar and others, No. 1 to 4 of Statement No. 1,—Convicted—No. 1, 2, and 3 of dacoity, attended with wounding and plundering, No. 4, of concealing plundered property knowingly. Sentenced to be imprisoned with labor in irons—No. 4 for 2 years and the rest for 3 years each.

Para. 2. The Court direct me to state that having commenced the trial of the prisoners noted in the margin, with the aid of your Mahomedan law officer, you were not competent in an intermediate stage of the trial to call in the assistance of a punchayet, (whose opinion, they observe, appears to have been formed on a mere perusal of the written evidence.) The verdict of the punchayet being to all intents and purposes null and void, they desire that you will conclude the trial by taking a futwa from your law officer; and that you will refer the trial, in the event of your differing in opinion with him, as required by the regulations.

The Western Court, on the 15th November, 1833, *concurred in this construction.*

October 4th, 1833.

To the Judge of Zillah Mynpooree, dated 11th October, 1833.

No. 836.
1829.
Reg. X. Sch. A, Arts. 3 and 46.

I am directed by the Court of Sudder Dewanny Adawlut for the Western Provinces to acknowledge the receipt of your letter of the 3d instant.

2. In reply, I am directed to inform you that deeds of Hibeh-bila-Ewuz should, as directed in Article 46 of Schedule A, Regulation X. 1829, be charged as "agreements" (Article 3, Schedule A,) with such stamp as the parties may determine.

The Presidency Court, on the 8th November, 1833, *concurred in this construction.*

October 11th, 1833.

To the Judge of Zillah Bareilly, dated 11th October, 1833.

No. 837.
1831.
Reg. VIII. Sec. 5.

I am directed by the Court to acknowledge the receipt of your letter of the 28th ultimo.

2. In reply, I am directed to inform you that summary suits for rent instituted by holders of rent-free land against their tenants, should be tried by the collectors

under the provisions of Regulation VIII. 1831, the civil courts being incompetent to receive them.

The Presidency Court, on the 8th November, 1833, *concurred in this construction.*

October 11*th,* 1833.

To the Judge of Zillah Cuttack, dated 11*th October,* 1833.

No. 838.
1817.
Reg. XVII. Sec. 14, Cl. 2.

I am directed by the Court to acknowledge the receipt of your letter of the 21st ultimo, requesting to be informed whether, in a miscellaneous case, you can proceed against a person whom there may appear sufficient grounds to bring to trial for forgery.

2. In reply, I am directed to refer you to the words "to any civil proceedings whatever" in Clause 2, Section 14, Regulation XVII. 1817, and to observe that they would include the miscellaneous case alluded to. I am directed to add that in the event of your making the commitment, it should be tried by the commissioner, and not by you in your capacity of session judge.

The Western Court, on the 15*th November,* 1833, *concurred in this construction.*

October 11*th,* 1833.

From the Judge of Zillah Goruckpore to the Register of the Western Provinces, dated 26*th September,* 1833.

No. 839.
1831.
Reg. IX. Sec. 2, Cl. 2, 3, 4 and 7.
1832.
Reg. VII. Sec. 15.

I have the honor to acknowledge the receipt of your letter of the 6th instant, in continuation of your communication of the 19th July, relative to the point of construction referred in my letter of the 6th of that month. (See construction No. 805, page 112 of this volume.)

2. I would beg respectfully to submit that your letter under acknowledgment has relation merely to the third point referred by me described in the 3d clause of paragraph 6 of my letter; leaving the two preceding points, detailed in the 1st and 2d clauses of my letter unnoticed.

3. The second clause I will not press, but must, I conclude, consider that the two Courts, Western and Presidency, have decided that the five and half lines which concluding Clause 2, Section 2, Regulation IX. of 1831, are explained to have reference to all suits, regular as well as summary, by Section 15, Regulation VII. 1832, are simply synonimous with the terms "modify or reverse."

4. But I should feel greatly obliged by your communicating to me the result of the Court's decision on the first point, contained in the first clause of the above quoted paragraph of my letter. It is quite clear that *the letter* of the Regulation does not give the judge authority to reverse the order of the lower court without examining the papers of the case; and in my opinion, which I wish to advance most respectfully, such a proceeding is contrary to the *spirit* of the whole judicial code and every principle of justice.

5. It is easy to see the expediency and propriety of investing a single judge of the Sudder Dewanny Adawlut with the authority to confirm the lower court's order without reviewing the record, if the appellant shall be unable to make out a tangible objection thereto; and if, even on his own shewing, the order of which the appellant complains shall appear just and legal. But that the deliberate decision of a court of justice should be liable to be reversed merely upon the unproved, and very probably garbled and misstated, representation of an interested party,—without any examination as to the facts of the case, any report called for, or investigation held,—is so totally contrary to every principle of jurisprudence that I have ever learned, that I cannot consider the non-insertion of the authority for such a proceeding in the latter division of the clause as an omission, or that such a construction of the Regulation was ever contemplated by the legislature.

6. I am most anxious to have this point clearly settled as the order out of which this correspondence arose is not the only one* I have received from the Court lately, in which a single judge has, simply upon the petition of a dissatisfied party, directed the re-admission on the file and further investigation of cases, which, I am inclined to think, had they been examined, would have been found to have been fully investigated even in the points which the petition has stated to have been passed over unnoticed; and as, pending a re-investigation or the preparation of a detailed statement of the facts relative to such cases, the execution of the original order is stayed, much inconvenience must arise from the circumstance to the parties; to say nothing of unnecessary waste of the judge's time, which will not admit in this zillah of each case having one decision passed on it within a reasonable period.

* Vide note at the foot of this letter which note I request may be recorded with the letter as an illustration of the inexpediency of the practice objected to.

Note.—My allusion here is more particularly to an order of the officiating judge dated 19th August last, in the case "Unoophnath Dooly, petitioner," my reply to which was delayed for the answer to my reference of the 6th July. In that case the parties in 1823 adjusted their differences by private arbitration. One party sued out execution of the award, under the provisions of Regulation VI. 1813. The arbitrators were summoned, and the award authenticated, and execution was granted on 12th July, 1823. This order was annulled by the Conrt of Appeal on the 6th December 1826 and 7th April, 1827, on a supposition that the period stipulated in the Regulation had been exceeded ere execution was petitioned for. At the Sudder Dewanny Adawlut this objection was over-ruled on the 21st November 1827 and 5th December, 1827, and the original order of the zillah court was confirmed. In the mean time one party had brought a regular suit to set aside the award, and on the 12th March, 1825, the pundit sudder ameen, after a long investigation, gave a decree, annulling the award. In appeal before the judge on the 11th February, 1829, the sudder ameen's decision was reversed, for reasons stated at length in the decree. A special appeal was applied for, and on 31st August 1832 and 25th March, 1833, two judges of the Patna Court of Appeal decided that the zillah judge's decree was in all respects just and unobjectionable.

2. The officiating judge of the Sudder Dewanny Adawlut has by a proceeding dated 17th ultimo, merely upon the petition of the worsted party, without any reference to the record, ordered that this thrice-decided case shall be re-admitted to its original number of the judge's file, and that enquiry be made on a particular point, which particular was fully and carefully investigated on the 19th and 20th April, 1824, previous to the first decision of the case in the sudder ameen's court.

To the Judge of Zillah Goruckpore, dated 11th October, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 26th ultimo.

2. On the first point referred in your letter of the 6th July, I am directed to acquaint you that the Court consider themselves fully competent to exercise powers vested in them by the 2d Clause of Section 2, Regulation IX. 1831, and Section 15, Regulation VII. 1832, without calling for the proceedings, whenever the order or decision appealed against, whether in a regular or summary suit, may appear to them manifestly unjust or illegal, or on any other of the grounds defined in the Clause first cited. In such cases a revision of the proceedings is obviously unnecessary to the determination of a fact which is clear and manifest in the face of the order or decision itself, or can be shewn to be so by documents accompanying it. And you will observe that the following Clause of the same Section provides for cases wherein the Court may see cause of doubt by giving them a *discretion* to call for the proceedings of the lower court or such parts of them as may appear necessary, and by the 7th Clause of the same Section, with the view of enabling the Court duly to exercise the powers vested in them by the said Section, the several courts of subordinate jurisdiction are strictly enjoined to conform to those parts of the regulations in force, which require them to record the point or points at issue between the parties and the grounds on which their judgments or orders may be issued.

3. As regards the particular case which appears to have given rise to your present reference, I am directed to inform you that the judge by whom the order was passed proposes to revise his proceedings.

4. The Court observe that you do not now appear to entertain any doubt regarding the second point on which you requested their opinion.

The Presidency Court, on the 8th November, 1833, *concurred in this construction.*

October 11th, 1833.

From the Judge of Zillah Purneah, dated 25th September, 1833.

No. 840.

Pleaders' fees in cases sent back for re-trial.

I have the honor to forward herewith, for the orders of the Superior Court, a copy of a petition presented to me by one of the plaintiffs in the case of Baboo Doolar Singh and others versus Rance Padmawattu and others, complaining of a hardship in being obliged to pay the pleaders' fees twice over in a case of very considerable amount,—the amount receivable by the pleaders on either side being 1,000 rupees.

2. The case (No. 3322, on the Superior Court's file) was originally decided in the Provincial Court of Moorshedabad; an appeal having been preferred to the Sudder Dewanny Adawlut, the decision of the Provincial Court was set aside by Mr. Walpole on the 9th May last, as being incomplete, and the case ordered back for further investigation. The Moorshedabad court having been abolished, the case has come to this court under the provisions of Clause 1, Section 3, Regulation II. 1833; this makes it necessary for the parties to employ other pleader than those originally retained, the pleaders of the Moorshedabad court having already received the whole of the sum deposited to their credit.

3. The pleaders at Moorshedabad having received the money under an order of that court, it clearly is out of my power to interfere in making them refund any portion of it, and I have therefore forwarded the petition for the disposal of the Court. In the meantime I have addressed the judge of Moorshedabad, requesting him to levy half the sum drawn by the pleaders there and to keep it in deposit till the instructions of the Court shall have been received, the amount to be remitted here for the pleaders of this court employed by the parties, should that be allowed; or otherwise to be returned to the pleaders formerly retained.

To the Judge of Zillah Purneah, dated 11*th October*, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 25th ultimo, forwarding a petition from one of the plaintiffs in the case therein mentioned objecting to the deposit of a second fee; and requesting the Court's orders thereon.

2. In reply, am directed to inform you that under the circumstances stated a full fee should be deposited, and that on the ultimate decision of the suit, you should exercise your discretion in awarding to the vakeels of your court such portion thereof as you may deem just and proper, and in determining to which party the fees already paid by the parties in the Provincial Court shall be charged.

October 11*th*, 1833.

To the Commissioner of Circuit for the 19*th Division, dated* 21*st June*, 1833.

No. 841.

Magistrates not competent under any circumstances to release prisoners under sentence.

I am directed by the Court to acknowledge the receipt of your letter of the 3d instant, and its enclosures, reporting that the magistrate of Balasore had released nine prisoners who were in such a state of health as to render their chances of living if kept in jail uncertain, and requesting the Court's sanction to the measure.

2. The Court are surprised that the magistrate should have taken upon himself to release prisoners before the expiration of their sentences without the authority of Government, a stretch of authority which in their opinion no circumstances can justify. In the event of his deeming it proper and expedient that the prisoners should be released, he should have submitted an application to that effect through you to this Court, removing the prisoners to more healthy or comfortable quarters to prevent any ill effects arising from their detention, pending the necessary reference for their temporary release or pardon.

3. Under these circumstances the Court desire that you will direct the magistrate to take the prisoners again into custody, in pursuance of the sentences passed against them, and to cause medical assistance, and every indulgence consistent with their safe detention, required by their situations, to be afforded to them.

From the Commissioner of Circuit, 19th Division, to the Register of the Presidency Court of Nizamut Adawlut, dated 25th September, 1833.

With reference to the orders of the Court of the 21st June, I beg to forward, at the request of the magistrate of Balasore, the annexed copy of his letter of the 14th September, reporting the re-apprehension of nine prisoners named whom he had, as previously reported, released in the hopes of saving their lives.

2. The Court will observe that the magistrate requests a re-consideration of the subject of releasing such prisoners without waiting for the Court's previous authority, as the progress of disease does not generally admit of the delay inevitably attending previous references.

3. The other parts of the magistrate's present reference do not call for any comment from me.

From the Magistrate of Balasore to the Commissioner of the 19th Division, dated 14th September, 1833.

In conformity with the instructions contained in your letter of the 23d July last, I have the honor of informing you that the prisoners therein named have been re-apprehended.

2. The lives of all these people have been saved by the change of air: they have all as yet continued well since their return to jail, and most assuredly not one would have survived a week had they remained in confinement; they were reduced to skeletons by fever and dysentery, their legs and feet were swollen, and medicine produced no effect upon them.

3. The Court of Nizamut Adawlut observe that no circumstances can justify such a stretch of authority, and that in the event of my deeming it expedient that a person should be temporarily released, I should submit an application to that effect through you to the Court. How useless such a proceeding would be the correspondence on this subject sufficiently shows. My report to you, mentioning their release, is dated the 8th May, the orders of the Court of Nizamut Adawlut are dated the 21st June!—The progress of fevers and dysentery is not so slow that a delay of five or six weeks is to be regarded as of little consequence.

4. Any magistrate who is unfit to be entrusted with a discretionary power to release a prisoner temporarily to save his life, must be unfit to perform 19-20ths of the other duties entrusted to him.

5. The situation of the jail is healthy, but the great difference of climate that prevails in different parts of this jurisdiction, as it occasions sickness on removal from one

place to another, also renders change of air so peculiarly efficacious, particularly in cases of dysentery, which is the most common disease amongst the natives of the province.

To the Commissioner of Circuit for the 19*th Division, dated* 11*th October*, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 25th, forwarding copy of one from the magistrate of Balasore, dated the 14th ultimo, reporting that he has re-apprehended nine prisoners, as directed by the Court's orders of the 21st June last, and requesting a re-consideration of the subject.

2. The Court must again remark that the magistrate has in this matter entirely mistaken his powers and duty. He has no discretionary power to release a convict under the circumstances of the case in question. His doing so was therefore an illegal act which this Court could not uphold. It required a positive enactment (Section 10, Regulation XIV. 1816) to authorize the Nizamut Adawlut to remit the remainder of a sentence passed on a prisoner in certain specified cases, among which that of sickness is not included, and by the orders of Government dated the 30th March, 1830, circulated on the 16th April of the same year, it is directed that all applications for the pardon of aged and decrepid prisoners should be forwarded to the Governor General in Council for confirmation. The power therefore assumed by Mr. Ricketts in the present instance cannot be justified by any grounds of expediency, and the Court desire that he will carefully refrain from exercising it again.

October 11*th*, 1833.

Resolution of the Presidency Court of Sudder Dewanny Adawlut, dated 1*st November*, 1833.

No. 842.
1825.
Reg. II. Sec. 2, Cl. 1.

Whereas it has been customary for parties petitioning for review of orders rejecting applications for a review of judgment to write their petition on stampt paper prescribed for miscellaneous petitions, viz. two rupees' value, on the plea that three months have not elapsed since the date of the order to be reviewed; and whereas such petition, being in fact a second petition on the same subject, ought to be governed by the rules applicable to the petitions for a review in the first instance:

It is resolved, that every and each such petition, provided it be presented within three calendar months from the delivery or tender of the decree appealed against, may be written on stampt paper of the value of two rupees: but, if perferred after the expiration of that period, all such petitions must be written on stampt paper prescribed in List 8, Schedule B, Regulation X. 1829, with reference to the amount or order of the property adjudged against the party desiring the review; in like manner as if a regular appeal were preferred from such judgment, as required by Clause 1st, Section 2, Regulation II. 1825.

The Western Court, on the 29*th November*, 1833, *concurred in this construction.*

November 1*st*, 1833.

From the Judge of Zillah Furruckabad to the Register of the Western Provinces, dated 7th October, 1833.

No. 843.
1803.
Reg. II. Sec. 8.

I think it my duty to bring to the notice of the Court the existing state of the transactions between the civil court of this district and the nabob of Furruckabad. I am inclined to think it expedient that some definitive arrangements should be made.

2. Section 8, Regulation II. 1803, is as follows: "The following article being the "sixth article of a treaty concluded with the nabob of Furruckabad on the 4th of June, "1802, is hereby enacted into a rule, for the guidance of the zillah court of Furruckabad. "Article sixth:—The authority of the Court of Adawlut shall not extend to the person of "the nabob, but as his connections and dependants are undefined, and as it is the "object of the British Government to introduce a fair and impartial administration of "justice throughout the province of Furruckabad, it is agreed that whatever complaint "may be preferred against any of the nabob's dependants shall, in the first instance, be "referred to the nabob, and in the event of the complainant not receiving speedy jus-"tice, or being dissatisfied with the nabob's decision, the complaint shall be decided in "the Adawlut." On this several questions arise.

1st. What length of time is to be sufficient to warrant the enforcement of the clause of "not receiving speedy justice?" On the whole the nabob certainly has been more tardy in deciding cases than the court, even before the introduction of the new system. I would also remark that in the Persian treaty, the copy of which is in the office the meaning is the same, but in the Persian copy of the Regulations it is different, no mention being made of the word "speedy," the words being "moodaee buhuk khood me rusud."

2dly. In what way is the decision of the nabob to be made or intimated? The custom universally was for the nabob to return the case with a statement of his opinion to the court, which statement generally concluded with words to this effect—"the matter is left in the hands of the court." This statement was generally taken and decision given to that effect, the different judges seeming to think that they had no option, (unless the plaintiff was dissatisfied,) to do otherwise. But in 1830 a case, Chooneeloll versus Permanund, was reversed by Mr. Taylor on his own authority, without a petition from the plaintiff, who had obtained a decree from the nabob. Mr. Taylor dismissed the case. It was appealed to the Provincial Court, and Mr. Taylor's decision reversed, not on the merits of the case, but on the grounds that he was not justified in interfering with the nabob's decision. Another case showed still stronger, the necessity of some arrangement, viz. Dal Chund and Thakoorpurshod versus Radakishen, referred to the nabob, and by him returned with a statement, according to which a decree was given by Mr. Taylor on the 30th March, 1830. The defendant appealed to the Provincial Court at Bareilly, by whom the judge's order was reversed, I believe on the same grounds, but am not quite certain, as no copy of the order was ever sent from that court to this. The plaintiff* then prayed for execution in the Bareilly Court, on which the order passed was

* Sic Orig. But query, defendant?

that " the order cannot be given from the court." He then petitioned in November, 1832, in this court, and the case was called for to inspect, before issuing orders. As the pressure of Foujdarry was then so great, this could not be readily done, and plaintiff went to the Sudder Dewanny, by whom an order was issued on 5th January, 1833, to enforce the nabob's decision. This was in progress, when on the 21st May last fresh orders were received to postpone it. The case therefore lies unfinished.

3dly. Has the nabob the power to receive cause originally himself? The Regulation (both Persian and English) does not seem to sanction this; the phrase being, " shall in the first instance be *referred* to the nabob." By whom referred unless by the court in which the suit was first instituted! The custom has hitherto been invariably as follows:—after the suit has been filed in court, if the defendant wishes, he represents that he is one of the nabob's relations and dependants. The nazir is ordered to ascertain the correctness, (except in those cases, where the defendant is a well known person,) and then the case is transferred to the nabob. The claim was never advanced by any nabob or guardian untill lately by Nabob Amud Yar Khan, the present guardian. I had heard he was in the habit of hearing cases originally, but as it was not brought before me officially, I did not take notice of it, until a petition was on the 22d August last, presented by Kuramut Ally Khan, stating that the nabob had received a suit originally, against him, that he had applied to several of the vakeels to defend his suit, but they all refused, as it was quite a novel proceeding, without the express permission of the court. On questioning the vakeels, I found Kurum Ally Khan's statement correct, and was also informed that the nabob (or rather the guardian) was in the habit of hearing suits originally himself; and that all proceedings connected with them were on plain paper. I wrote to the nabob to know if this was the case, and how many suits had been entertained in this way: he would not return a positive answer to either question; but in his letter asserted generally, that according to the Regulations he had the right to an original jurisdiction in entertaining suits.

4thly. Where is the defendant, (being of course a relation or dependant,) who is dissatisfied, to bring his appeal? or is he to be allowed one? The Regulation is silent on this head. It is true the Bareilly Court has been in the habit of receiving appeals of this nature, but the measure is open either to the sanction or disapprobation of the Sudder.

5thly. Has the nabob the power to enforce a decree? Nothing of the sort ever occurred, nor even was the question ever raised until August last, when the nabob wrote to the court, demanding the right. I answered that, without orders from superior authority, I would not sanction any departure from established usage, but that I intended to bring the whole case before the Sudder Dewanny, for the consideration and orders of that Court.

3. Formerly the number of cases sent to the nabob were very few, two or three per year: latterly they have increased in a tenfold degree. The reasons seems to be this; at the time of the treaty, the nabob give in a list of his relations, near and distant, and some particular dependants and servants, for whom he wished to secure fixed salaries in entail. This was agreed to by the British Government, and the salaries were

confirmed to these people, but as each man died his salary or pension (zeehukkee) was divided among his sons or other heirs, and again sub-divided at the death of the latter, and so on. The numbers have increased so as to be a nuisance to the city. The subsistence of some of them is dwindled down to not above one rupee per month, (this sort of proceeding must sooner or later come to an end.) With few exceptions they are too proud to do any thing, are almost universally in debt, borrowing from any one they can, mortgaging their pensions or any lands they may possess over and over again, and living dissolute, vicious lives, often engaged in street brawls to the great annoyance of the whole community; yet most of these people on any complaint being filed either in the judge's or magistrate's court, affect to style themselves nabob, to answer by letter, and indeed to set the authority of the court at defiance. When magistrate I brought this to the notice of the commissioner of the division.

4. This sort of *imperium in imperio* would hardly seem a desirable state of things, and I think it might be found expedient to make some arrangements regarding the points at issue. The nabob might be placed on the footing of a principal sudder ameen; if this were not deemed proper, on account of his rank and station, he might be required to appoint a dewan at a fixed salary to be paid by him to decide these causes, as a principal sudder ameen, and subject like those officers to the supervision of the court of the district, or the nabob might be allowed, as far as regards civil suits against his relations and dependants, to exercise the powers of judge, subject only to the Sudder Dewanny; (one objection to this would be the small amount of the majority of the suits, most of them being cognizable by the moonsiffs; or lastly to abolish the jurisdiction of the nabob altogether, and extend that of the civil courts of the district, both judge's and moonsiffs', over the persons and suits under consideration, with the exception of the nabob himself; and this I should be inclined to think the most expedient of the whole.

5. I am however bound to state, that as far as I am able to ascertain both from enquiries, and from having looked over several of the cases, the decisions of the nabob have been founded on justice, and generally have given as much satisfaction as those of the regular civil court. Nevertheless the double jurisdiction is an inconvenience.

From the Judge of Zillah Furruckabad to the Register of the Sudder Dewanny Adawlut Western Provinces, dated 16th October, 1833.

In looking over my letter of the 7th instant, relative to the jurisdiction of the nabob of Furruckabad, I find I have forgotten to mention one point. In the event of the nabob's retaining his jurisdiction on any thing like the present footing, I would beg to suggest that a limited time only should be given to the defendant, after receipt of the notification, to plead that he is a "relation or dependant," and demand that the suit be sent to the nabob. At present the practice is for them to advance the claim at any time, and often they make use of the privilege to delay the suit. They wait till all the stages have been gone through, and the cases ready for hearing in the civil court, and then demand the transfer of the cause to the nabob, where it lies usually for a year or two.

Indeed I am inclined to think that the chief reason in transferring the cases has been merely a wish on the part of the defendants to put off the evil day; the nabob being much more dilatory than the court, even before the new system was established.

To the Judge of Zillah Furruckabad, dated 8th November, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 7th ultimo, regarding the jurisdiction of the nabob of Furruckabad.

2. The Court direct me to communicate to you the following answers to the questions referred in your letter.

Question 1. It must remain with the judge, on the showing of the plaintiff, to determine whether the delay in the decision of the case has been such as to authorize his receiving the suit on the ground that the plaintiff has not received speedy justice.

Questions 2 and 5. The decisions passed by the nabob should be enforced by himself, by means of the influence which he is supposed to possess over his own dependants. The courts are neither called on, nor authorized to aid in their execution, nor is the nabob himself vested with any special authority with this view by the Regulations.

Question 3. The nabob has no authority to receive or act on petitions of plaint except on reference from the judge of the zillah court. This is plainly required by the terms of the Regulation; all decisions which may have been passed by the nabob without reference from the court, are consequently null and void.

Question 4. A defendant being dissatisfied with the decision of the nabob, has no right of appeal; as he is necessarily a dependant of the nabob, the Regulation appears to consider that in becoming his dependant, he has voluntarily subjected himself to his authority in civil matters.

3. With regard to the inconvenience arising from the great number of persons styling themselves relatives and dependants of the nabob, I am directed to observe that, as their possessing this title confers on them no advantages or privileges whatever, but merely subjects claims against them in the first instance to the investigation of the nabob, and even deprives them of the right of appeal to the regular courts, which is possessed by others, the Court cannot imagine that any modification of the law is required, but rather incline to think that the inconvenience stated to exist, must have arisen from a mistaken construction of the Regulations giving these powers to the nabob; and as his decisions are stated to be generally equitable, there is still less necessity of change.

4. I am directed to take this opportunity of acknowledging the receipt of your letter of the 16th ultimo. The Court are of opinion that unless the defendant in his first pleading (the juwub-i-dawa) pleads his privilege as a dependant of the nabob, he cannot afterwards assert it. This rule will, the Court observe, effectually check the practice mentioned by you of delaying the administration of justice, by requesting a reference of the case when it has nearly been brought to a conclusion.

The Presidency Court, on the 29th November, 1833, *concurred in this construction.*

November 8th, 1833.

To the Judge of Zillah Mynpooree, dated 22d December, 1833.

No. 844.
1825.
Reg. VII. Sec. 3. Cl. 6.
Sec. 4. Cl. 4 and 5.
C. O. S. D. A.
19th July, 1833.

I am directed by the Court of Sudder Dewanny Adawlut for the Western Provinces to acknowledge the receipt of a letter from you under date the 15th instant, requesting to know whether the following expression in the circular letter of the 19th July, 1833, (No. 90 of vol. 2, C. O. S. D. A.) "or objections made to the sale of property within the "period of the proclamation," is to be understood as including objections made by defendants, against whom the process has been taken out, to the sale of their own property, or those only which may be urged against such sale by claimants of the property or other individuals.

2. In reply, I am directed to acquaint you that the expression in question must be considered equally applicable to defendants as to other individuals, who may have objections to advance to the disposal of property advertised for sale by public auction in satisfaction of a decree of court.

The Presidency Court, on the 6th December, 1833, *concurred in this construction.*

November 22d, 1833.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 29th November, 1833.

No. 845.
1833.
Reg. II. Sec. 5.

I am directed by the Court to request that you will obtain the opinion of the judges of the Presidency Court on a question which has arisen, as to the competency of a single judge of the Sudder Dewanny Adawlut to reject a petition for a special appeal, transferred under the provisions of Section 5, Regulation II. 1833, from a Provincial Court on its abolition to the file of the Sudder Dewanny Adawlut, on which a judge of the former court has recorded his opinion in favor of the admission of the appeal. On a consideration of the Section of the Regulation above quoted, particularly of that part of it which provides "that the judges of the Court of Sudder Dewanny Adawlut are "hereby empowered and required to dispose of cases of this nature under the general "powers with which they are vested, in the same manner as though they had been regu-"larly cognizable by, and referred to, or instituted before them,"—it appears to the Court that a single judge of the Sudder Dewanny Adawlut is competent to exercise such power, whenever it may appear to him that no sufficient grounds exist for the admission of a special appeal, and that the opinion recorded by the judge of the Provincial Court is manifestly erroneous and at variance with the rules prescribed for the admission of a special appeal.

The Presidency Court, on the 20th December, 1833, *concurred in this construction.*

November 29th, 1833.

No. 846.
1814.
Reg. XXIII. Sec. 15, Cl. 3.

Resolution of the Presidency Court of Sudder Dewanny Adawlut, dated 6th December, 1833.

A doubt having arisen as to whether an appeal does or does not lie to the Court of Sudder Dewanny Adawlut from the order of a zillah or city judge, dismissing a vakeel

of a moonsiff's court; the Court are of opinion that such appeal does not lie: for the judges were declared competent by Clause 3, Section 15, Regulation XXIII. 1814, to remove such vakeels (without a reference to any other authority being specifically required) while they were required by Clause 2, Section 10, Regulation XXVII. 1814, to submit a report for the orders of the Provincial Court, whenever they might consider a vakeel attached to their own courts, or to those of the registers or sudder ameens, worthy of dismissal from office.

The Western Court, on the 27th December, 1833, *concurred in this construction.*

December 6th, 1833.

To the Session Judge of Zillah Chittagong, dated 13th December, 1833.

No. 847.
1793.
Reg. IX. Sec. 47.
1803.
Reg. VII. Sec. 15, Cl. 1.

It having been brought to the notice of the Court, that you have occasionally issued your warrants, for the execution of sentences passed upon prisoners committed for trial by the joint magistrates subordinate to the magistrate of Chittagong, to the joint magistrates themselves, I am directed to inform you that all warrants should be addressed to the chief magisterial authority of the district, whether he be denominated magistrate, as in the case of Chittagong, or joint magistrate, as in that of Noacolly.

December 13th, 1833.

From the Judge of City Moorshedabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 2d September, 1833.

No. 848.
Suits by or against the European manager of a native minor's estate, are to be tried in the courts to which such suits would be referrible if natives were parties to them.

I have the honor to acknowledge the receipt of your letter dated the 23d ultimo, informing me that the prohibition has been suspended in the case of Mr. Sutherland, which prevents European British subjects from becoming managers of land under the Court of Wards; I beg therefore to be favored with the instructions of the Sudder Dewanny Adawlut, on the points noticed in my letter, dated 14th May, 1833; viz.

1st. Are suits in which Mr. Sutherland is a party as manager, to be retained on the file of the judge whatever be the amount, as those of a European?

2d. Does an appeal lie to the Supreme Court from the decisions passed here, as in cases where Europeans are parties?

To the Judge of City Moorshedabad, dated 13th December, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 2d September last, submitting two questions, relating to suits in which Mr. Sutherland, in his capacity of manager of the estates of the late Raja Hurinath is a party, and in conformity to the decision of Government, communicated to the Court under date the 2d instant, to transmit to you the following replies.

2. *To the first question.* The appointment of Mr. Sutherland to the management of a native minor's estate, cannot be considered to confer on such native the rights and

privileges of a European British subject, which only attach to the manager personally Suits brought forward, either by or against Mr. Sutherland in his capacity of manager, not being personal suits, should be regarded as suits instituted on the part of or against a native, and ought to be tried, like every other suit in which natives are parties, in the court by which, from its amount, it may be cognizable. The necessity of adhering to the usual routine in such cases is the more apparent from the inconvenience which would result from an opposite course; the appeals in numerous small suits of an extremely small value would, if the cases were decided in the first instance by the judge be thrown in the Courts of Sudder Dewanny Adawlut, which are already sufficiently burdened with arrears.

3. *To the second question.* It would rest with the Supreme Court either to admit or reject appeals of the nature alluded to, as may appear to them just and proper under the acts of parliament bearing on the point.

This construction was given in conformity to the opinions contained in the letter of the Western Court, dated 18*th October*, 1833, *and the Secretary to the Supreme Government, dated* 2*d December*, 1833.

December 13*th*, 1833.

To the Register of the Sudder Dewanny Adawlut, Western Prvvinces, dated 20*th December*, 1833.

No. 849.

Showing the practice of the Court when one of several parties against whom a decree has been given appeals against it.

I am directed to acknowledge the receipt of your letter of the 14th September, 1832, and its enclosures, requesting to be informed whether any and what rule has been adopted in the Presidency Court, with regard to the following point:—"A decision is passed "against two or more defendants in a suit; can any one of these defendants prefer an "appeal from that decision in so far only as it includes his own share of the property "litigated? or is it incumbent on him to appeal from the whole decree, including the "whole of the property in dispute?"

2. In reply, I am directed to observe that it appears from the records of the Court to have been the practice, when there have been several defendants, and the decree has been passed against all, without specification of what is due from each, for the person among them, who first appeals to file his petition of appeal on the full amount of the decree; and the appeal would not be admitted, were he to write it on a stamp of a value proportioned to his own alleged share.

3. If it be stated in the decree, or can be ascertained from the proceedings, what is the share of each defendant, each may appeal separately on his own share only.

4. This practice has lately been modified by Mr. Shakespear, with the concurrence of his colleagues. On the 9th May last, he directed the lower court, in a case in which the separate liabilities of several defendants holding under distinct titles, were not mentioned in the decree, to amend the same, by inserting the amount due by each defendant,

in order that the parties concerned might not be debarred from their individual right of appeal.

5. Copies of roobukaries and other papers in the cases above alluded to, are forwarded for the perusal of the Western Court.

December 20*th*, 1833.

To the Commissioner of Circuit for the 7th Division, dated 20*th December*, 1833.

No. 850.
1797.
Reg. XIII. Sec. 2.
1803.
Reg. XII. Sec. 18.

I am directed by the Court to acknowledge the receipt of a letter from you under date the 9th instant, with its enclosure from the magistrate of Banda, on the subject of the administration of the prescribed oath of office to an assistant.

2. In reply, I am directed to communicate to you the opinion of the Court that under the provisions of Section 2, Regulation XIII. 1797, an assistant to a magistrate on his removal from one district to another, whether under the orders of Government or the commissioner of the division, should take the prescribed oath of office before the magistrate of the zillah to which he may have been newly appointed, and that the magistrate is in such cases competent, and indeed required by the provisions of the foregoing enactment, to administer it to him without any special orders from Government on the subject.

The Presidency Court, on the 3*d January*, 1834, *concurred in this construction.*

December 20*th*, 1833.

To the Officiating Magistrate of Zillah Burdwan, dated 26*th December*, 1833.

No. 851.
1793.
Reg. XXII. Sec. 16.
1803.
Reg. XXXV. Sec. 26.

The Court have had before them a representation from Mr. Patton, magistrate of Beerbhoom, complaining of your conduct in arresting Busharut Allee Khan, darogha of thanna Keogram, in his district, while in the execution of his duty in serving a warrant issued to him by Mr. Patton.

The Court observe that the magistrate of Beerbhoom was fully authorized by Section 16, Regulation XXII. 1793, to issue the warrant he did, and that supposing any charge to have been preferred or pending against the darogha in your court, you should have postponed requiring his attendance to answer it, until he had completed the duty on which he was deputed by his immediate superior. They therefore consider you to have acted unwarrantably on the occasion, and direct me to communicate to you their expectation that you will exercise a more sound discretion in future.

December 26*th*, 1833.

To the Judge of Zillah Futtehpore, dated 27*th December*, 1833.

No. 852.
1814.
Reg. XXVII. Sec. 34.

I am directed to acknowledge the receipt of a letter from you under date the 18th instant, requesting to be informed whether a vakalutnamah, executed by a decree-

holder for the conduct of an original suit when pending in your court, is sufficient authority for the vakeel therein appointed to superintend the execution of the decree on its being confirmed in appeal.

2. In reply, I am directed to communicate to you the opinion of the Court that the Section of the Regulation quoted by you, (Section 34, Regulation XXVII. 1814,) is conclusive on the point in question, viz. that a vakalutnamah executed on the original institution of a suit, unless cancelled by the party or otherwise set aside, must be considered operative and in full force "until the final judgment shall have been enforced."

The Presidency Court, on the 17th January, 1834, concurred in this construction.

December 27th, 1833.

From the Judge of Zillah Bareilly, dated 7th December, 1833.

No. 853.
1803.
Reg. XXVII Sec 16.

A difference of opinion existing as to the competency of the civil court to stay the collector's proceedings against a malgoozar, pending investigation of a suit instituted to dispute the demand, I have the honor to submit the following question to the Court for their instructions.

2. Is the civil court competent to issue an injunction to the collector to discharge an individual from personal restraint, and to prohibit the sale of real property on a petition being filed *previous* to the advertisement of the defaulter's lands for sale, and on *good security* having been furnished to fulfil the award of the court?

3. It appears to me that Clause 2, Section 16, Regulation XXVII. 1803, (which, as far as I can discover, has nowhere been rescinded,) warrants the court to act in the affirmative; and that Section 10 of Regulation XI. of 1822, prescribing a deposit of cash, is only applicable where an estate has been duly advertized for sale by the revenue authorities prior to the institution of the suit in court.

To the Judge of Zillah Bareilly, dated 27th December, 1833.

I am directed to acknowledge the receipt of a letter from you under date the 7th instant, submitting a question as to whether the civil court is competent to issue an injunction to the collector to stay the sale of the real property of a defaulting malgoozar, pending the investigation of a suit instituted to dispute the demand, on a petition being filed previously to the advertisement of the defaulter's lands for sale, and on good security having been furnished to fulfil the award of the court.

2. In reply, I am directed to communicate to you the opinion of the Court, that the civil court is not competent to exercise such power.

The Presidency Court, on the 17th January, 1834, *concurred in this construction.*

December 27th, 1833.

From the Judge of Zillah Mynpooree to the Officiating Register to the Sudder Dewanny Adawlut for the Western Provinces, dated 30th December, 1833.

No. 854.
1806.
Reg. II.
Secs. 2 and 3.

I herewith transmit copies of a plaint filed by Lalmun in the cutcherry of the moonsiff of Mynpooree for thirty rupees, fourteen annas, and six pie, due from Chetram, and of two urzees, one from the moonsiff of Mynpooree, dated the 3d September, 1833, and the other from the cutwal of this town, dated 9th October, 1833, and request you will lay them before the Court of Sudder Dewanny Adawlut.

2. The circumstances of the case appear to be, that Chetram Marwaree, formerly resided at Moukumgunj, a town adjoining Mynpooree, where he had two houses; one he mortgaged to Usghur Ullee, a vakeel of this court, and the other he sold to a person named Lulloo; he then went to his own country, leaving some property locked up in a room in the latter house, the key of which he entrusted to Gunesh muhajun. Some time after his departure, Lulloo, concluding that he was either dead or would never return, took the key from Gunesh and gave it to the cutwal, and asked him to open the room and see what things were in it. The cutwal accordingly took an inventory of the property and sent it to the magistrate and Lalmun instituted a regular suit to recover the amount of his debt from the property. The moonsiff caused ishtyars to be stuck up in his own cutcherry, and on the door of both the houses which formerly belonged to Chetram, and applied to me to obtain an inventory of the property from the Foujdaree Court. On my application the magistrate ordered the cutwal to deliver over the property to the nazir of my court, who has now charge of it; and I have directed the moonsiff not to proceed with the cause until further orders. The object of this reference is—1st, to ascertain whether a regular suit can be instituted, against property where there is no defendant to be sued? and 2d, whether, with reference to the seventh clause of Section 16, Regulation III. of 1803, a judge on a summary investigation may at once satisfy the just demands of creditors against unclaimed property under charge of the court, or whether he must abstain from making any disbursement until the expiration of a twelvemonths' proclamation, and the subsequent receipt of the orders of the Governor General in Council?

To the Judge of Zillah Mynpooree, dated 10th January, 1834.

I am directed by the Court to acknowledge the receipt of a letter from you under date the 30th ultimo, with its Persian enclosures in the case of Lalmun *versus* Chetram Marwaree; and to acquaint you in reply that as the cause of action would seem to have originated in your jurisdiction, and property belonging to the defendant is stated to be forthcoming, the case in question appears to be cognizable, and should be proceeded on in the manner laid down in Sections 2 and 3, Regulation II. 1806.

2. With regard to your second question I am directed to observe that the Section of the Regulation cited by you does not appear applicable, as you do not state that any

information has been received of the death of the individual referred to, or, if deceased, that he died intestate.

The Presidency Court, on the 31*st January,* 1834, *concurred in this construction.*

January 10*th,* 1834.

To the Officiating Commissioner of Circuit for the 15*th Division, dated* 17*th January,* 1834.

No. 855.
1824.
Reg. XV.

The Court having had before them your letter of the 3d instant, requesting the opinions of the judges as to whether Regulation XV. 1824 is applicable to disputes for possession of fisheries, direct me to inform you that by the construction of the Court dated 28th February, 1807, (No. 28, page 8 of the construction book, vol. 1,) complaints of violent dispossession from fisheries, tanks, &c. may be taken up under Regulation XLIX. 1793, consequently they are cognizable by the criminal courts under Regulation XV. 1824.

The Western Court, on the 14*th February,* 1834, *concurred in this construction.*

January 17*th,* 1834.

To the Judge of Zillah Dacca, dated 24*th January,* 1834.

No. 856.
Mortgaged property can be sold in execution of a decree obtained by other than the mortgagee, with a reservation of the rights and interests of the mortgagee.

I am directed by the Court to acknowledge the receipt of your letter of the 5th ultimo, requesting permission to review the orders passed in the following cases :

Elizabeth Bullard, plaintiff,
versus
Aka Mahomed, defendant;
The Revd. M. Shepherd, petitioner,
versus
Kishen Chunder Doss ;
and
Ram Rutton Chowdry,
versus
Kishen Chunder Doss.

2. The Court have in several instances ruled that mortgaged property can be sold in execution of decrees obtained by other than the mortgagee, with a reservation of the rights and interests of the mortgagee, as you will perceive by the accompanying copies of roobukarees as per margin,* and accordingly authorize you to review the orders in question with a view to your passing such as may be in conformity with that principle.

* Roob. of 31st March and 5th May, 1830, in the case of Mutthoor Mohun Ghose, petitioner.
Do. of 16th March and 17th June, 1830, in the case of Mr. C. Reed and Behari Lal.
Do. of 21st January, 1833, in the case of Moorari Dhur Lushku
Do. of 14th Jan., 1833, in the case of Pud Lochun Soor.

January 24*th,* 1834.

857.
24 January, 1834.

From the Session Judge of Zillah Cuttack to the Register of the Nizamut Adawlut, dated 3d January, 1834.

No. 857.
1818.
Reg. IV. Sec. 12.
Circular Orders, 16th July 1830, 23d March, 1832, and 22d Feb. 1833.

I have the honor to submit in conformity with Section 9 of Regulation VII. of 1831, the accompanying proceedings as noted in the margin* for the orders of the Nizamut Adawlut.

* 1. Proceeding of the acting magistrate, dated 30th November, 1833.
2. Ditto ditto Sessions Court, 4th December, 1833.
3. Ditto ditto acting magistrate, 5th December, 1833.
4. Ditto ditto Sessions Court, 5th December, 1833.
5. Ditto ditto acting magistrate, 7th December, 1833.
6. Abstract from the proceedings of the Sessions Court on the trial of Nubbeen Patur, 12th December, 1833.

2. The circumstances which led to this reference are as follows. On a perusal of the acting magistrate's original proceedings of commitment (No. 1) it appeared, that he had committed Nubbeen Patur for wilful murder and theft, and Juggoo Sahoo and Nund Sahoo for receiving the stolen property, making use of the word "Thangeedaree."—Considering the charge against the latter two prisoners, at variance with the Circular Orders of the Nizamut Adawlut of the 16th of July, 1830, 23d of March, 1832, and 22d February last, I returned the calendar and foujdaree record to the acting magistrate, accompanied by the proceedings of this court (No. 2), dated the 4th instant, directing him to commit Juggoo Sahoo and Nund Sahoo, for "knowingly receiving stolen property,"—if he thought the crime for which he made use of the word "Thangeedaree" (which appears to me an improper term when a specific charge should be made) was proved against them. His proceeding in reply (No. 3) was, declining to conform to my instructions, and therein he has stated it to be his opinion that the crime of having possession of the property of the deceased, knowing how it had been obtained was *not* proved; but as he was anxious that Juggoo Sahoo and Nund Sahoo should be made an example of, he requested that if I could not convict them, I would send them back to him for punishment. I then repeated my order, for the reasons stated in my proceeding of the 5th instant (No. 4), upon which Mr. Pringle instead of obeying my requisition, held another proceeding on the 7th instant (No. 5), by which he annulled his commitments of the 30th of November last, recommitted Nubbeen Patur on the original charge of wilful murder attended with theft, and not only acquitted Juggoo Sahoo and Nund Sahoo, but made them witnesses for the prosecution.

4. Mr. Pringle in his proceedings of the 30th November last and 5th instant has declared himself competent to punish the receivers of the stolen property in this case, but I am of opinion that had he done so it would have been acting contrary to Section 4, Regulation XII. of 1818.

5. I have completed the trial of Nubbeen Patur, but have postponed it pending this reference, as it is not clear whether I ought to take the depositions of Juggoo Sahoo and Nund Sahoo on oath, or not; for as they were in the first instance committed to take their trial before this court, the magistrate's subsequent proceeding of the 7th instant may be declared illegal, and on being reversed by the superior Court, I may be directed to try them for knowingly having stolen property in their possession.

6. The points on which I beg to be favored with the opinion and orders of the Nizamut Adawlut for my future guidance are as follows:

First. Whether the orders issued by me on the 4th and 5th instant were in conformity with the Circular Orders of the Nizamut Adawlut contained in your letter of the 23d of March, 1832, and 22d of February last or not?

Second. Whether a magistrate can legally, after committing a prisoner for trial to the sessions court, quash his own commitment, release one or more of the prisoners, and make him or them evidence for the prosecution in the same trial?

Third. Whether in commitments for receiving stolen property and keeping it (knowing how it was obtained) it would not be advisable to make use of the words دیده و دانسته گرفتن و داشتن مال سرقه rather than the word تهانکي داري, which appears to me to be a vague mode of expression in a charge which ought to be clear and well defined?

Fourth. Whether I am to take the depositions of Nund Sahoo and Juggoo Sahoo as witnesses on oath, or is the acting magistrate to be directed to re-commit them for trial?

7. If they are tried they will I have no doubt be acquitted, as on a perusal of the record of the acting magistrate's proceedings there appears no evidence to prove, or even to presume that they wilfully transgressed.

To the Session Judge of Zillah Cuttack, dated 24th January, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 3d instant, and to communicate to you the following replies to the questions proposed.

2. *First.* Your orders of the 4th and 5th instant were in conformity with the Circular Orders of the 23d March, 1832, and 22d February, 1833, which, as well as that of the 16th July, 1830, (paragraphs 15, 16, 17,) require that in commitments the charge should be stated as explicitly as possible.

3. *Second.* A magistrate, after committing a prisoner for trial, cannot legally quash his commitment, release one or more of the prisoners, and make him or them evidence for the prosecution in the same trial.

4. *Third.* In commitments for knowingly receiving or keeping stolen or plundered property, the words دیده و دانسته گرفتن و داشتن مال سرقه or مغروته, as the case may be, should be used: and not the word تهانکي داري.

5. *Fourth.* The order of the magistrate making Nund Sahoo and Juggoo Sahoo witnesses for the prosecution being irregular, the Court annul it, and desire that he will conform to the orders issued by you, and commit those persons on the charge of "knowingly receiving stolen property." You will then proceed on the trial, and, in the event of your acquitting them, it will be competent to you to postpone the case as regards the remaining prisoner, and direct the magistrate to take the evidence of those two persons on oath under the provisions of Clause 2, Section 5, Regulation X. 1824, should you deem that measure necessary to the ends of justice.

6. With advertence to your 4th paragraph, I am directed to state, for the information of the magistrate, that he is not competent to punish receivers of stolen property in any case, the aggravating circumstances of which render the commitment for trial of any of the prisoners necessary, but that he must commit them for trial under the rule contained in Clause 2, Section 4, Regulation XII. 1818.

January 24*th*, 1834.

To the Commissioner of Dehli, dated 31*st January*, 1834.

No. 858.
1810.
Reg. XVI. Sec. 9.

I am directed by the Court to acknowledge the receipt of your letter of the 15th instant, with its enclosures.

2. In reply, I am directed to inform you that under the circular order of Government of the 30th November, 1831, paragraphs 10 and 11, it would appear that if a joint magistrate be acting in subordination to his principal without independant authority, his orders are appealable in the first instance to the magistrate, the commissioner being however at all times competent to call for the proceedings of any of his subordinates: but if the joint magistrate be acting independently of the magistrate, by which must be understood if he have received separate charge of a portion of a district or a particular department, his orders are appealable to the commissioner direct. This explanation appears to correspond nearly with that contained in your letter; you will be pleased to communicate it to the magistrate of Hissar for his future guidance.

The Presidency Court, on the 14*th February*, 1834, *concurred in this construction.*

January 31*st*, 1834.

From the Judge of Zillah Dacca to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 21*st January*, 1834.

No. 859.
1814.
Reg. XXIII. Sec. 27.

I request you will submit to the judges of the Sudder Dewanny Adawlut my enquiry, whether in their opinion the new moonsiffs are competent to fine plaintiffs for not proceeding in their suits?

2. The Court's letter of the 21st September, 1833, paragraph 3, refers indeed to Section 12, Regulation XXVI. 1814, but it subsequently specifies, as the consequence of neglect, the dismissal of their suits, or trial in their absence; and Clause 3d, Section 8, Regulation V. 1831, grants the new moonsiffs only the same powers as the old, in regard to the practice of their courts. I therefore wish a definite opinion on the above question.

To the Judge of Zillah Dacca, dated 7th February, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 21st ultimo, No. 37, and in reply to point out that the rules for the guidance of moonsiffs in cases of default are contained in Section 27, Regulation XXIII. of 1814, and do not vest

them with the power of fining parties in suits for neglect, and that Section 12, Regulation XXVI. 1814, alluded to in the Circular Order of the 21st September, 1832, (which you have quoted as dated 21st September, 1833,) was intended to refer to principal and other sudder ameens, to whom its provisions must, under Section 73, Regulation XXIII. 1814, be considered applicable.

February 7th, 1834.

From the Judge of Zillah Mynpooree to the Officiating Register to the Sudder Dewanny Adawlut, Western Provinces, dated 15th January, 1834.

No. 860.
1799.
Reg. VII. Sec. 15.
1831.
Reg. VIII.

I request the favor of your laying before the Court of Sudder Dewanny Adawlut Western Provinces, the papers noted in the margin,* and soliciting their opinion whether a landholder or other person empowered to sue for arrears of land rent is at liberty to sue, either by a regular or summary suit, all the defaulters of a village collectively.

2. Prior to the transfer of the summary suits to the revenue officers, I only allowed such defaulters to be included in one summary suit as conjointly cultivated any parcel of land, and were conjointly answerable for the rent, and although the Sudder Board of Revenue in their instructions of the 22d February, 1833, to the subordinate revenue authorities state the practice of the courts generally in the Western Provinces to be otherwise, I think there can be no doubt that the practice, if it does exist, is illegal. If the principal is admitted that a suitor may proceed against the defaulters of a village collectively, of course the number of the defendants can only be limited by the number of inhabitants of a village, who in some instances may amount to hundreds, and why the option is to be left to the suitors, and the convenience of the defendants is in no way to be consulted, I am at a loss to conceive. The suitor in such cases being generally in good circumstances and the defendants the reverse, I think facilities ought rather to be given them to disprove demands if unjust than obstacles thrown in their way. In cases where the suitor proceeds collectively, and the defendants reply separately, the defence of each varying, there become as many branches as there have been different causes of action united, and the witnesses of the plaintiff, who will generally be the same to prove all the claims, cannot possibly be questioned minutely by each defendant with regard to the demand made against him; the defendants also, probably, will not all reply at the same time; some will have recourse to all the delay which the forms of the court admit of, others again may be desirous to have the matter in dispute settled as speedily as possible, especially if they are obliged to remain in attendance themselves from inability to appoint a vakeel. The instructions to my moonsiffs have always been not to admit of a cause of action being split into two, nor of two or three causes of action distinct in themselves being united in one suit.

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* A letter from Mr. Edgeworth, assistant to the commissioner of Furruckabad to the address of Mr. Frazer collector of this district. dated 5th March, 1833.

A letter from Mr. Deedes, officiating secretary to the Sudder Board of Revenue, W. P., to the commissioner of Furruckabad, dated 22d February, 1833.

3. This reference has originated from the following circumstances :—Petumber Singh instituted a suit against Bharamul and others for arrears of rent in the cutcherry of the collector ; the suit was dismissed ; he then instituted a regular suit in this court to obtain, in reversal of the collector's summary award, the amount of rent with costs of the summary suit. This cause, on the promulgation of Regulation VII. 1832, was transferred to the moonsiff of Shekoabad. The defendants there objected to a suit being instituted against them collectively, as contrary to the practice of this court ; afterwards on the plaintiff representing that instructions had been issued to the collectors from the Sudder Board of Revenue sanctioning the practice, he made a reference to me on the subject :—the plaintiff further urged as a reason for instituting the suit against the defendants collectively that he was obliged to do so, as the summary suit to reverse the decision of which the regular suit was instituted, had been admitted in that form. The last plea of the plaintiff is not in my opinion valid, although I think that it is desirable that the same rules of practice on this point should obtain in both the judicial and revenue courts, as it is optional with claimants to proceed against defaulters in either, and suits are transferrible from one jurisdiction to the other.

To the Judge of Zillah Mynpooree, dated 7th February, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 15th ultimo, with its enclosures.

2. In reply, I am directed to inform you that the practice described in the latter part of your 2d paragraph, of allowing a single suit to be instituted against a large portion of the inhabitants of a village for arrears of rent, when such inhabitants are not otherwise connected than as dwelling in the same village, and do not jointly cultivate any piece of land, is irregular and objectionable ; nor does it appear to the Court as sufficient reason that the original summary suit was admitted in that shape. The limit laid down in the first part of the same paragraph, with regard to including several ryots in one suit, is in the Court's opinion judicious, and should be invariably observed.

The Presidency Court, on the 28th February, 1834, *concurred in this construction.*

February 7th, 1834.

To the Judge of Zillah Mynpooree, dated 7th February, 1834.

No. 861.
1814.
Reg. XXIII.
Secs. 52 and 59.
1832
Reg. VII. Secs. 5 and 7.

I am directed by the Court to acknowledge the receipt of your letter of the 10th January, containing several queries on points connected with Regulation V. 1831, and to send you the following answers.

2. *Question 1st.*—Decrees passed in the lower courts, and confirmed in appeal by the judge after summoning the respondent, must be considered as decrees of the judge's court, and be executed under the rules in force for the execution of such decrees.

3. *Question 2d.*—Moonsiffs are not entitled to receive commission on sales conducted in execution of their own decrees, but only on those which they hold in execution of the decrees of other courts.

4. *Question 3d.*—The peons attached to the courts of the moonsiffs under the provisions of Section 5, Regulation VII. 1832, are intended exclusively for the execution of judicial processes, and should not be employed in the distraint and sale of property for arrears of rent.

5. *Question 4th.*—Petitions filed in consequence of proclamations under Clause 3, Section 59, Regulation XXIII. 1831, (and the corresponding enactments for the courts of sudder ameens, principal sudder ameens and moonsiffs,) must be considered as miscellaneous petitions, and bear the stamp fixed by Schedule B, for such petitions in the courts in which they are preferred.

The Presidency Court, on the 28th February, 1834, *concurred in this construction.*

February 7th, 1834.

From the Judge of Zillah Mynpooree to the Officiating Register to the Sudder Dewanny Adawlut, Western Provinces, dated 23d January, 1834.

No. 862.
Reg VIII. 1831.

With reference to your circular letter of the 15th November, relative to the description of suits cognizable by revenue officers under the provisions of Regulation VIII. 1831, I request you will solicit for me information from the Court of Sudder Dewanny Adawlut, Western Provinces, on the following point.

2. In the event of a suit being instituted in the zillah court or that of a moonsiff by a resident cultivator, to obtain a reversal of a summary decision passed by a collector adjudging a balance against him and ejecting him from his jote as a defaulter, is the value of the suit to be estimated by the amount of rent in dispute, or by the selling value of the land or both? The claim is to disprove the balance and regain possession; but as the point originally at issue in the summary suit was the justness or otherwise of the demand of rent, and the ejectment or non-ejectment of the cultivator rested solely on the defendant being deemed a defaulter or otherwise, I conceive that the amount of the suit should be estimated by the amount of balance in litigation.

To the Judge of Zillah Mynpooree, dated 7th February, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 23d ultimo.

2. In reply, I am directed to inform you that in suits of the nature described in the 2d paragraph of your communication, viz. suits instituted in a zillah court or that of a moonsiff by a resident cultivator, to obtain a reversal of a summary decision passed by a collector adjudging a balance against him and ejecting him as a defaulter, the value of the suit should be estimated at the amount of rent in dispute, or, in other terms, at the sum sued for in the first instance.

The Presidency Court, on the 28th February, 1834, *concurred in this construction.*

February 7th, 1834.

To the Judge of Zillah Tirhoot, dated 14th February, 1834.

No. 863.
1814.
Reg. XXVI. Sec. 8.
1831.
Reg. V. Sec. 16. Cl 3.
Para. 10, Circular Orders, 1st Nov. 1833, No. 91.

I am directed by the Court to acknowledge the receipt of your letter of the 20th ultimo, and, in reply to the question contained in the first paragraph, to refer you to the 5th paragraph of their Circular Order of the 28th June last, and to convey to you their opinion that a practice similar to that prescribed in the case of appeals to their Court, in regard to the demand of security for the costs of appeal, may be followed by the zillah judges.

2. The Court direct me to observe that it requires a positive enactment to alter the rules prescribed for the admission of appeals, which allow the petitions to be filed without the *mojibaat* or reasons for appealing; so that they are not competent to authorize you to proceed in the manner suggested in your second paragraph *

3. With reference to the third paragraph, I am directed to observe that though under the construction contained in the tenth paragraph of the letter circulated on the 1st November last, the moonsiffs may depute ameens to make local investigations in regular suits pending before them, they cannot depute a mohurrer or other person to make such as they themselves may be required to make by the different courts. If the moonsiff cannot leave his station for the purpose of making such investigations, without materially interfering with his more special duties, he should represent the circumstance to the judge, who can depute any other person to perform the duty.

February 14*th*, 1834.

From the Acting Superintendant of Tributary Mehals at Cuttack to the Register of the Sudder Dewanny Adawlut, dated 28*th January,* 1834.

No. 864.
1816
Reg. XI.

A suit, for the recovery of certain lands situated on the borders or within the tributary estate of Neelghurry, but decreed after a summary investigation by the magistrate at Balasore to be within that estate, has been preferred to me as superintendant of tributary mehals by a zumindar subject to the Regulations. As Regulation XI. of 1816, does not provide for such cases, and having my doubts whether this is the proper tribunal to which the plaintiff should apply, I have to request that you will obtain the opinion of the Court of Sudder Dewanny Adawlut whether I should admit the suit on my file or refer the petitioner to the zillah court.

To the Acting Superintendant of Tributary Mehals of Cuttack, dated 14*th February,* 1834.

In reply to your letter of the 28th ultimo, No. 88, I am directed by the Court to inform you that as the summary enquiry by the magistrate of Balasore appears to have ascertained that the contested lands lie within the Neelghurry estate, they are of opinion that the assumption should be maintained until the contrary be shewn by a more formal enquiry, which enquiry should be conducted by you on the admission of the suit referred to in your letter.

February 14*th*, 1834.

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* That is, by compelling appellants to file copies of decrees and reasons of appeal with their petitions of appeal.

To the Commissioner of the Saugor and Nerbudda Territories, dated 14th February, 1834.

No. 865.
1817.
Reg. XVII. Sec. 6, Cl. 4.

I am directed by the Court to acknowledge the receipt of your letter of the 30th ultimo.

2. In reply, I am directed to inform you that as the crime of incest is of the nature of an offence against society and not of a private wrong, there is no reason why the offender in question should not be prosecuted on the part of the Government; on this head I am directed to refer you to Clause 4, Section 6, Regulation XVII. 1817, which requires in cases of adultery that a woman shall be prosecuted by her husband, but leaves other kinds of *zinna* (under which term incest is included in the preamble,) to be dealt with in the usual method.

The Presidency Court, on the 28th February, 1834, *concurred in this construction.*

February 14th, 1834.

From the Judge of Zillah Furruckabad to the Officiating Register of the Sudder Dewanny Adawlut, Western Provinces, dated 27th January, 1834.

No. 866.
1793.
Reg. III. Sec. 8.
1803.
Reg. II. Sec. 5.

I would beg to solicit the construction of the Court on the following point.

2. In Regulation II. of 1803, Section 5, it is prescribed as follows. The zillah courts are empowered, &c. &c. "or in all other cases, the cause of action shall have "arisen, or the defendant at the time when the suit may be commenced shall reside as a "fixed inhabitant within the limits of the zillah over which their jurisdiction may extend."

Now cases of the annexed nature are not uncommon:

Mynpooree
A.
Khanpoor B. | Furruckabad C.

A, an indigo planter resident in the Mynpooree district, makes an advance of cash to B, a zumeendar, resident of Khanpoor district, taking a bond and agreement to deliver a certain portion of produce at C, another factory belonging to A, situated in the Furruckabad district, the bond being written and the advance made at A's permanent residence. B fails in this contract, either by not delivering any plant or by delivering less than the stipulated quantity or of an inferior quality, at factory C, in this case plaintiff A may sue B, either in Mynpooree or Khanpoor; but the question is, can he do so in Furruckabad, can the cause of action be construed to have arisen in that district?

3. I have no case of this nature before the court, but an indigo planter has brought it to my notice, as desirable to have the point settled; assuring me that he has had decrees given him in such cases; and that at other times his suit has been dismissed on the grounds that the matter did not lie in the jurisdiction of the third court in which the delivered factory was situated. An analogous case is, when two houses of business situated in two different districts have transactions of any mercantile nature with each other, which lead to a suit in court. It has been customary to allow either party to sue the other in either district, the transactions being held to have taken place in both.

4. I would beg to suggest the expediency of an order from the Court on the subject.

To the Judge of Zillah Furruckabad, dated 14th February, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 27th ultimo, requesting the opinion of the Court regarding the application of the provisions of Section 5, Regulation II. of 1803.

2. In reply, I am directed to inform you that the Court concur with you with regard to the case in question; in which the plaintiff A may sue B, either in Mynpooree where the cause of action arose, or Khanpoor in which the defendant B resided at the time of instituting the suit. The failure of delivery at Furruckabad is not a circumstance which, under the Regulation, would give jurisdiction to the court in that district.

The Presidency Court, on the 28th February, 1834, *concurred in this construction.*

February 14th, 1834.

From the Judge of Zillah Cuttack to the Register of the Sudder Dewanny Adawlut, dated 3d February, 1834.

No. 867.
1831.
Reg. VIII. Sec. 8.

I beg to be informed if, in the opinion of the Court of Sudder Dewanny Adawlut, the civil courts are competent, under Section 8, Regulation VIII. of 1831, to receive regular suits for arrears of rent, on paper bearing a stamp of one-fourth the prescribed value—if under the existing Regulations they would have been cognizable as summary suits, or if the suits should in the first instance be preferred to the collector under Section 7, and be by him referred to the judicial authorities under Clause first, Section 9 of the same enactment before the courts can admit them.

To the Judge of Zillah Cuttack, dated 14th February, 1834.

I am directed to acknowledge the receipt of your letter of the 3d instant, and in reply to inform you that the Court perceive nothing in the provisions of Section 8, Regulation VIII. 1831, to prevent the civil courts from receiving regular suits for rent under the circumstances stated by you, on stampt paper of one-fourth the first prescribed value.

The Western Court, on the 26th March, 1834, *concurred in this construction.*

February 14th, 1834.

From the Judge of Zillah Beerbhoom to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 29th July, 1833.

No. 868.

A decree being given for half the amount sued for, and the appellate court, on the appeal of the defendant, being of opinion that the whole should have been decreed, held that the decree of the lower court cannot be amended in favor of the plaintiff, unless he has urged objections to it.

I beg to be favored with the instruction of the Court on the following points of practice:

A sues B for 1,000 rupees, and obtains a decree for 500 only: B dissatisfied with the decision, appeals with a view to its entire reversal. A, now the respondent, does not appear on the usual notice and proclamation, and the appeal proceeds exparte. On a consideration of the pleadings and proofs filed in the original suit, the court trying the appeal is of opinion that the whole 1,000 rupees should have been decreed to A; under

these circumstances, should the appeal court content itself with simply dismissing the appeal, thus confirming the original decision, or should it reverse the decision and pass a decree in favor of A for the whole sum?

Again, supposing the same circumstances with this difference only, that the respondent does not appear, what course is then to be pursued?

Or generally in regular appeals should a suit be decided simply on its own merits, as they are to be gathered from the pleadings and proof filed in the original suit and from any further evidence adduced in appeal, without any regard as to which party appeals and whether the opposite party attends or not, or should the latter circumstances also be taken into account in the adjudication of it?

To the Judge of Zillah Beerbhoom, dated 14*th February*, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 29th July last, and in reply to inform you that in the case stated by you, if A do not appeal, nor appear as respondent on the appeal of B, the decision cannot be amended in his favor. If however, A do appear, and in his reply to the pleas of B, object to that part of the decision which dismisses a part of his claim, it is competent to the court to go into the whole merits of the case as it effects both parties, and to decide it in the same manner as if A had preferred a separate appeal.

The Western Court, on the 16*th May*, 1834, *concurred in this constructian.*

February 14*th*, 1834.

Radha Govind Sing, plaintiff,

versus

Debeepershad Sirkar and Mr. Musselbrooke, } defendants.

From the Officiating Additional Judge of Burdwan to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 20*th January*, 1834.

No. 869.

The original exhibits filed in a suit being missing, the parties are at liberty to file copies.

I beg leave to forward to you, for the information and orders of the Court of Sudder Dewanny Adawlut, a copy of my proceedings under this day's date in the above case in which the original exhibits, and other papers and documents and deeds are missing, but of which copies, I am led to understand, are possessed by and procurable by the parties concerned. The depositions of the plaintiff's witnesses are in the record office and forthcoming.

To the Additional Judge of Zillah Burdwan, dated 14*th February*, 1834.

I am directed by the Court to acknowledge the receipt of a letter and its enclosure from the late officiating additional judge, reporting for orders the loss of certain proceedings in the case of Radha Govind Sing, plaintiff, versus Debeepershad Sirkar and Mr. Musselbrooke.

2. As it appears from Mr. Robertson's roobukaree that he has referred the matter to the judge, the Court do not deem it necessary to pass any orders on it. They however desire me to say that they are aware of no objection to calling upon the parties to supply copies of such of the missing papers as they may have by them, or be able to furnish.

February 14*th*, 1834.

From the Judge of Zillah Futtehpore to the Register of the Court of Sudder Dewanny Adawlut, Western Provinces, dated 10*th February*, 1834.

No. 870.

1803.
Reg. II. Sec. 10.
Reg. III. Sec. 12.
1814.
Reg. XXIII. Sec. 27, Cl. 1.
Reg. XXVI. Sec. 12, Cl. 3.

As the decisions of zillah judges in appeals from the decisions of moonsiffs are final under the provisions of Section 28, Regulation V. of 1831, and the Court appear desirous that the Regulations should be strictly attended to in cases of default of plaintiff or absence of defendants; and in several respects the powers of the native judges are not very distinctly laid down; and as I also entertain doubts regarding the stamp duties in certain cases, I request you will obtain for me instructions on the following points.

1st. Whether, a suit having been dismissed under the provisions either of Section 12, Regulation III. of 1803, of Clause 1st, Section 27, Regulation XXIII. of 1814, or of Clause 3d, Section 12, Regulation XXVI. of 1814, the plaintiff is at liberty to institute a new suit for the same claim, or is precluded from so doing under Section 10, Regulation II. of 1803.

2dly. In what cases the term nonsuit should be used in decisions. I am desirous of issuing orders to the native judges on the subject, and as uniformity of practice is desirable, I hope the Court will not consider the question needless. The natives entertain different ideas on the subject: some think that a summary appeal cannot be heard from a decision dismissing a cause without an investigation of its merits, unless the word nonsuit is used, and unnecessarily prefer a regular appeal when a summary one would have been sufficient; and others are of opinion that the insertion of it is necessary to enable a plaintiff to institute his suit *de novo*.

1814.
Reg. XXIII. Sec. 27, Cl. 1.

3rdly. As rules are prescribed in Clause 1st, Section 27, Regulation XXIII. of 1814, for the guidance of moonsiffs only in cases of default of plaintiff or absence of defendants *after the answer has been filed*, whether in case the plaintiff, prior to the serving of the notice on the defendant, or the filing of the reply, absents himself, the moonsiff is to be guided by that enactment or by Section 12 of Regulation III. 1803.

1814.
Reg. XXIII. Sec. 27, Cl. 2.

4thly. The meaning of Clause 2d, Section 27, Regulation XXIII. 1814, does not appear to me clear. From the words "if the suit be dismissed without an investigation of its merits," it might be inferred, that a cause tried *exparte* and decided in favor of the plaintiff, could not on an appeal on the part of the defendant be remanded back to the moonsiff or transferred to any other competent authority for further investigation, while on the other hand the words "if either of the parties shall appeal," &c. lead to an opposite conclusion. I should also wish to know whether regular or summary appeals are intended in this enactment, and if the former, can a summary appeal be received on the part of a defendant from the decision of a moonsiff, sudder ameen or principal sudder ameen,

on the ground that the suit was tried *exparte* in opposition to the Regulations; and if so, has the judge in such a case the power of remanding the suit back to the lower court for re-trial and decision?

1814. Reg. XXVI. Sec. 3, Cl. 4.

5thly. If regular appeals only were intended in the enactment cited in the preceding question, are the rules in Clause 4, Section 3, Regulation XXVI. of 1814 now to be considered applicable to orders and decrees of the new moonsiffs, in cases similar to those therein provided for with regard to registers and sudder ameens?

1814. Reg. XXIII. Sec. 27, Cl. 2.

6thly. With reference to the wording of Clause 2, Section 27, Regulation XXIII. of 1814, I request to be informed whether I am right, in considering a judge vested with discretionary power to confirm the moonsiff's dismissal on default, or otherwise, as he may think fit on consideration of the reasons assigned for the neglect in the original trial. If the rule is to be understood literally, it renders it imperative on a judge in every case of appeal either to determine the case on its merits or remand it back to the moonsiff by whom it was dismissed, whether the appellant can furnish a satisfactory excuse for his negligence or not.

7thly. In the event of a regular appeal being preferred by a plaintiff from the decision of a moonsiff, sudder ameen, or principal sudder ameen, dismissing his claim without investigation of its merits, *not* on the ground that the dismissal was contrary to the Regulations (as in that case a summary appeal would be sufficient), but on the ground that the default on his part in the original suit was owing to circumstances entirely beyond his control, must the further investigation of the suit be conducted by the judge himself, or may it be remanded to the inferior court for re-investigation and decision?

8thly. In the event of a regular appeal being preferred under circumstances similar to those in the preceding question by a defendant, viz. that owing to unavoidable circumstances he was unable to defend his cause, and praying that his evidence might be heard in appeal, whether the cause may be sent for re-trial to the lower court or must it be proceeded with by the judge?

1803. Reg. IV. Sec. 18. 1793. Reg. V. Sec. 18. 1831. Reg. V.

9thly. Whether the rules laid down in Section 18 of Regulation IV. of 1803 for the guidance of Provincial Courts of Appeal are applicable to civil judges appointed under Regulation V. of 1831, for their guidance in cases of regular appeal, in which it appears to them that the original suit has not been sufficiently investigated in the lower court.

1814. Reg. XXVI. Sec. 5, Cl. 3.

10thly. Is Clause 3, Section 5, Regulation XXVI. of 1814, to be considered as rescinded by Section 2, Regulation X. of 1829; and, if so, are additional sheets when requisite for the purposes therein stated to be of plain or stamped paper; and are dukhlnamuhs taken from individuals on being put into possession of lands, houses, &c. decreed in their favor, required to be on plain or stamped paper?

To the Judge of Zillah Futtehpoor, dated 21st February, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 10th instant, submitting for the decision of the Court, several points connected with the duties of native judicial officers.

2. *Query 1st.*—On the dismissal of a suit under Section 12, Regulation III. 1803, Clause 1, Section 27, Regulation XXIII. 1814, Clause 3, Section 12, Regulation XXVI. 1814, the plaintiff is at liberty to institute a new suit for the same claim, as if the case had not been heard.

3. *Query 2d.*—If there has been no decision on the merits of a case, but merely a dismissal pronounced on default, the omission of the word nonsuit, in the proceedings of the officer who disposed of the case, cannot be considered to bar the claim of the plaintiff to the admission of a summary appeal.

4. *Query 3d.*—If the plaintiff absent himself previous to service of notice on the defendant or before the reply be filed, the suits cannot be proceeded in and must be dismissed.

5. *Query 4th.*—The defendant cannot of course be expected to file his reply before receiving notice of the claim preferred against him.

The Regulations nowhere provide for a summary appeal from the decisions of moonsiffs; nor can such an appeal be had from such decision on the grounds that the suits have been *exparte*, contrary to the Regulations in force: in such cases the appeal must be regular.

6. *Query 5th.*—The provisions of Clause 4, Section 3, Regulation XXVI. 1814, cannot be considered applicable to moonsiffs, as they have reference only to summary appeals.

7. *Queries 6th, 7th and 8th.*—On the admission of an appeal preferred for a dismissal on default by a moonsiff, the judge cannot confirm the dismissal with reference to reasons assigned for neglect in the original trial, but must either decide the case on its merits or direct the moonsiff to do so, reversing the dismissal on default. The same rule applies to appeals by defendants on the ground that an *exparte* decision was given against them, when they were prevented by circumstances from attending the court.

8. *Query 9th.*—The rules contained in Section 18, Regulation IV. 1803 for the guidance of Provincial Courts, must be considered applicable to judges of districts under Regulation V. 1831, and they may consequently return a case for further investigation.

9. *Query 10th.*—Clause 3, Section 5, Regulation XXVI. 1814 is rescinded by Section 2, Regulation X. 1829. There is no Regulation requiring that additional sheets required for the purpose therein mentioned or for dukhlnamuhs taken from individuals put in possession under a decree should be on stamped paper.

The Presidency Court, on the 27th March, 1834, *concurred in this construction.*

February 21st, 1834.

From the Judge of Moorshedabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 5th February, 1834.

No. 871.

1793.
Reg. III. Sec. 8.
1795.
Reg. VII Sec. 7.
1803.
Reg. II. Sec. 5.
1831.
Reg. V. Sec. 5, Cl. 1.

The accompanying document is copy of a petition of plaint preferred in the Moorshedabad Court of Appeal for balance of rent claimed on a farm in the Rungpore district. Before the abolition of that court, it was sent over to the city court for trial, on the

ground, that the plaintiff and the defendant were both resident within the jurisdiction of the city court of Moorshedabad.

2. Circumstances connected with the management of the affairs of the plaintiff's heirs, after his death, delayed the hearing of the cause till yesterday, when it came under consideration in this court, and it appeared that the farm for which rent is claimed, is in the Rungpore zillah. Though from its being of greater amount than 10,000 rupees it was only cognizable in the Provincial Court of the division, yet if a summary suit for the rent had been preferred under Regulation VII. of 1799, it must, I presume, have been preferred in the Rungpore zillah court; if, after a decision, a regular suit had been preferred to reverse the summary award, the plaintiff, whether landlord or tenant, would, if the sum had been below 10,000 rupees, have filed his plaint in the Rungpore and not in the Moorshedabad city court; and as the ground of action is the same whether the regular suit follows a summary award or is preferred without a previous summary suit, I infer that under Section 8, Regulation III. of 1793, this suit should now be tried by the zillah court of Rungpore under the provisions of Regulation V. of 1831, and that before the abolition of the Court of Appeal, the jurisdiction did not depend on the residence of the parties but on the local situation of the farm. Under this impression, as the suit is for a large sum (upwards of three lacs of rupees) and may involve much unnecessary expense to parties, if after my decision an objection was successfully made to the jurisdiction, I have thought it advisable to suspend further proceedings until I have the orders of the Sudder Dewanny Adawlut, as to its disposal, as I do not think myself competent to alter an order of the Court of Appeal even if I happen to be right in my opinion, that the suit is within the jurisdiction of Rungpore, and without that of the Moorshedabad city court.

3. As connected with the question of jurisdiction which forms the subject of this reference, and as involving matter of some consequence with regard to Clause 1st, Section 5, Regulation V. of 1831, I beg to submit the following general question, on which I request to be favored with the construction of the Sudder Dewanny Adawlut. Seeing that a farm, or other fixed property, may be in one jurisdiction or zillah, the landlord resident in another, and the tenant in a third: *Quest.* Which of the three is *the* zillah or jurisdiction competent to try a suit preferred under Clause 1, Section 63, Regulation VIII. 1793, where the demand is neither for land, nor for land rent, but for a receipt on account of money paid, or damages for refusing a receipt for money paid as land rent?

To the Judge of City Moorshedabad, dated 21st February, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 5th instant, requesting their opinion as to the zillah in which the case of Koonwur Hurinath Rai, plaintiff, *versus* Tarneeshunker and others for the rent of a farm in zillah Rungpore, should be tried, and in reply to refer you to the construction No. 73, dated 4th April, 1811, (in page 17, of the printed Construction Book) and to request that you will transfer the case to the judge of zillah Rungpore for trial.

2. In reply to the question contained in your third paragraph, I am directed to inform you, that the Court are of opinion that the suit instituted under the circumstances supposed by you, would be triable either in the district or jurisdiction in which the money was paid, or in that in which the defendant resided when the suit was instituted.

The Western Court, on the 21st March, 1834, concurred in this construction.

February 21st, 1834.

From the Judge of Zillah Mynpooree to the Officiating Register of the Sudder Dewanny Adawlut, for the Western Provinces, dated 31st January, 1834.

No. 872.
1829.
Reg. X. Schedule B, Article 8.
1814.
Reg XXVI. Sec. 3.
Reg. XXIII. Sec. 27, Cl. 2.

I request the favor of your soliciting instructions from the Court of Sudder Dewanny Adawlut on the following points:

1st. In the event of a plaintiff being nonsuited under the provisions of Article 8, Schedule B, Regulation X. of 1829, on the grounds that the value of the thing claimed had been understated in the proportion of ten per cent., can a summary appeal be received under Section 3, Regulation XXVI. of 1814, on the ground that the thing claimed was not undervalued, or must the plaintiff prefer a regular appeal?

2ndly. Are the rules in Section 3, Regulation XXVI. of 1814, for summary appeals, applicable to dismissals on default by moonsiffs? Regulation XXIII. makes no provisions for summary appeals from decisions passed by moonsiffs; the meaning of Clause 2, Section 27 of that Regulation appears doubtful. It enacts if *either* of the parties shall appeal, &c. &c. In case of a dismissal on default, the plaintiff alone can have grounds of dissatisfaction, and if the clause is applicable to appeals by defendants in consequence of the original cause having been tried *exparte*, regular appeals must be meant and not summary ones.

To the Judge of Zillah Mynpooree, dated 21st February, 1834.

I am directed to acknowledge the receipt of a letter from you under date the 31st ultimo, submitting certain questions for the Court's opinion.

2. Although the case stated in this question does not fall within the provisions of Section 23, Regulation XXVI. 1814, the Court are of opinion that the principle of the rule contained in Section 4, Regulation XIII. 1808, may be considered to apply, and that consequently a summary appeal may be had from a nonsuit passed under Article 8, Schedule B, Regulation X. of 1829, if it can be shewn by the plaintiff that the value of the property claimed has not been understated by him, and that consequently the order passed by the sudder ameen or principal sudder ameen was erroneous.

3. There is no regulation authorizing a summary appeal from the decision of moonsiffs, the appeal open to a defendant in suits tried exparte is a regular appeal, and to such an appeal Clause 2, Section 27, Regulation XXIII. of 1814, appears to refer.

The Presidency Court, on the 24th October, 1834, *concurred in this construction.*

February 21st, 1834.

To the Officiating Joint Magistrate of Pubna, dated 28th February, 1834.

No. 873.
1830.
Reg. V. Sec. 3.
1823.
Reg. VI. Sec. 7.

I am directed by the Court to acknowledge the receipt of your letter of the 15th instant, requesting to be informed whether a contract entered into by a ryot to cultivate indigo for a period of five or ten years, and by which he is required to settle his accounts annually, and receive fresh advances, is valid, if executed on stamped paper required for the amount of the first year's advances; and whether the ryot can be obliged by it under Regulation V. 1830, to settle his accounts at the end of the year, or on failing to do so, be compelled, under Section 3, to give the number of bigahs mentioned for the entired period named in the contract.

2. In reply, I am directed to inform you that, provided it be proved that the engagement to cultivate indigo was voluntarily executed by the ryot, the criminal court must enforce the provisions of Section 3, Regulation V. 1830; and that, under Section 7, Regulation VI. 1823, no objection can be made to the engagement on account of the stamp, provided the value of it be such as is required for a bond of a similar amount.

3. I am further directed to observe that Regulation V. 1830, is silent as to compelling a ryot to settle his accounts at the end of the year.

February 28th, 1834.

To the Judge of Zillah Bareilly, dated 14th March, 1834.

No. 874.
1829.
Reg. X Schedule B, Article 8.

I am directed by the Court to acknowledge the receipt of your letter of the 5th instant, regarding the calculation of stamp on petitions of plaint, &c.

2. In reply, I am directed to inform you that the practice of your court of excluding the fractional parts of a rupee from such calculations is irregular; any sum however small constituting an excess requiring an increase of stamp.

The Presidency Court, on the 4th April, 1834, concurred in this construction.

March 14th, 1834.

To the Judge of Zillah Jessore, dated 21st March, 1834.

No. 875.
1813.
Reg. VI.
1824
Reg. XV.

The Court, having had before them the proceedings submitted by you with your return of the 24th September last, in reply to a precept in the case of Cheedam Chunder Biswas, petitioner, direct me to communicate to you the following observations and orders thereon.

2. They are of opinion that the joint magistrate was not competent to certify the case of the petitioner to you under Regulation VI. 1813; the provisions of that Regulation which relate to the summary investigation of cases of forcible disposition, &c. having been modified and superseded by Section 2, Regulation XV. 1824. It is expressly declared in the preamble of that Regulation that the "reference" of such cases "from the foujdary to the dewanny court, as prescribed by Section 5, Regulation VI. "1813, might not always insure the prompt enquiry and decision, which are essential to

"the object of the summary process therein provided for;" while Section 4 provides that no investigation of the same case (viz. a case which has been brought forward in a criminal court,) shall be entered upon the civil court otherwise than on the institution of a regular suit.

3. The circumstance of the proprietor of the land not being a party in the suit, which seems to have induced the joint magistrate to refer the case to you, is immaterial; as under the rule contained in the sixth paragraph of the circular order of 7th January, 1831, it was competent to the joint magistrate to make him a party thereto, by issuing to him the perwaneh prescribed in Section 3, Regulation XV. 1824.

The Western Court, on the 7th March, 1834, *concurred in this construction.*

March 21*st*, 1834.

From the Judge of Zillah Furruckabad to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 11*th March*, 1834.

I beg permission to bring the following point to the notice of the Court:

No. 876.
1825.
Reg. XX. Sec. 3, Cl. 1.

1st. With reference to Clause 1st, Section 3, Regulation XX. 1825, are civilians, merchants and others, being European British subjects, who reside within the limits of a cantonment, but totally unconnected with the army, to be subject in actions of the nature specified, to a military court of requests, or to the civil courts? or to either, at the option of the plaintiff?

2d. If they are at all to be subject to the several military courts of requests, it would seem expedient to determine what is to constitute residence? Many of the indigo planters in this part of the country have two or even more residences, one in a station or cantonments, the other at their factories, residing occasionally at each, and neither can be called their permanent residence more than the other. Of which are they to be considered residents? or of both places?

3d. In the one of these cases there would be clashing of authority, and in the other, supposing an indigo planter to reside within the limits of cantonments at a sudder station and to have a factory in a joint magistrate's division, situated fifty miles distant, at which he often resides—in the event of his being accused of ill-treating the people (for this I conclude to be the meaning of the term "personal actions," provided the damages or fine imposed would not exceed 400 rupees,) or non-payment of which would ordinarily be cognizable by the joint magistrate, the plaintiffs must go all the way to the sudder station to the military court of requests, which sits but once a month.

4th. The whole tenor of Regulation XX. of 1810, is plain enough in restricting the jurisdiction of a court-martial or military court of requests, to persons not being European British subjects, to the following classes, viz. 1, officers, and soldiers, and retainers of all sorts in the receipt of public pay; 2, servants of officers; 3, persons registered as belonging to the bazars. It would seem to have been the intention of Regulation XX. 1825 to make the same discrimination in regard

to European British subjects; but there is much diversity not only of opinion but of practice on this head.

To the Judge of Zillah Furruckabad, dated 26th March, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 11th instant, requesting the opinion of the Court on certain points connected with Clause 1, Section 3, Regulation XX. 1825.

2. The military court of requests being a King's court, constituted by an Act of Parliament, the Court are not competent to determine the extent of its jurisdiction, which must be decided by the military court itself under the laws enacted for its guidance.

3. The Court are however of opinion that the civil servants of the Company, merchants, and others mentioned in paragraph 2 of your letter, (who reside within the limits of a cantonment, although totally unconnected with the army,) are under the terms of the Regulation subject, during their actual residence, to the jurisdiction of a military court of requests, and to that of no other court, in all cases of personal action of debt; they are consequently exempted from the authority of the Company's courts while so resident.

4. The residence or non-residence of a person within the jurisdiction of the court of requests or of the Company's courts must be determined by the circumstances of each case as it occurs; the Court consider it unadvisable to lay down a general rule on a point the decision of which may be affected by such a variety of considerations.

The Presidency Court, on the 18th April, 1834, *concurred in this construction.*

March 26th, 1834.

From the Judge of Zillah Dacca to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 11th March, 1834.

No. 877.
1825.
Reg. VII. Sec. 3, Cl. 6.
Circular Order, 19th July, 1833.

Since the Court's order, to delay sales of real property in satisfaction of decrees for three months from the date of any order disallowing a claim to the same, it has become a practice to cause petitions of claims to be presented the day previous to that fixed for the sale, not with a view of eventually establishing any claim, but for the sole purpose of getting the prayer disallowed, and obtaining a delay of three months, at the end of which, a new petition of claim is ready to be thrown in by another hand, so that the execution of decrees becomes delayed *ad infinitum.*

2. The Court, in their order which fixes three months as a period for appeal, instead of one month, do not appear to me to have superseded Clause 6, Section 3, Regulation VII. 1825, the provisions of which are equally applicable to a longer as a shorter period for appeal: indeed the functions of the Court being executive, not legislative, they could not have intended to rescind that enactment: but I request specific instructions on this point, *i. e.* whether petitions thus dropped in the day before that fixed

for sale, without documents or any sort of support, are to be permitted to postpone the sale for three months. I request you will lay this letter before the judges for their orders; in the meantime it is my intention to act under the Regulation above quoted.

To the Judge of Zillah Dacca, dated 27th March, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 11th instant, No. 117, and in reply to observe that you have mistaken the intent of their circular order of the 19th July last, which was not to allow a new postponement of the sale on the rejection of every petition objecting thereto, but merely to prohibit the order for sale being carried into execution for three months, that is, until the expiration of the period prescribed for appealing, with a view of enabling the parties dissatisfied with it, to prefer their appeal within that period.

2. The Court do not understand by what rule you consider one month to be the period prescribed for summary appeals to this Court: the fifth Clause of Section 3, Regulation XXVI. 1814, declares the period to be the same in summary as in regular appeals.

March 27th, 1834.

From the Officiating Judge of Zillah Bundlekhund to the Register of the Sudder Dewanny Adawlut for the Western Provinces, dated 2d April, 1834.

No. 878.
1831.
Reg. V. Sec. 16, Cl. 3.

I have the honor to submit for the sentiments and orders of the Court of Sudder Dewanny Adawlut the following particulars:

My predecessor, Mr. Ainslie, heard five cases of appeals under the provisions of Regulation V. 1831, Section 16, Clause 3, and, seeing no reason to alter the decisions appealed from, he confirmed them; no orders however were passed regarding the amount of the remuneration the vakeels were entitled to, nor was any order passed regarding the repayment of any portion of the stamp duty of the paper upon which the appeals were written; Mr. Ainslie did not, it appears, clearly perceive under what head the appeals of Regulation V. 1831, Section 16, Clause 3, were to be included, and he intended to have submitted an application to the Court for instructions on the subject, but was prevented from doing so by illness.

2. On examining myself the various Regulations regarding the payment of portions of stamp duty and the fees of vakeels, I feel, as Mr. Ainslie did, some uncertainty as to the rules which should be observed in cases coming under Regulation V. of 1831 now referred to; I would solicit therefore the instructions of the Court on the following three points:

1st. What class of appeals are those decided under Section 16, Clause 3 of Regulation V. of 1831 to be considered as belonging to?

2d. What amount of remuneration are vakeels entitled to? and

3d. Whether any portion of the stamp duty is to be repaid, and, if so, the rule for regulating the amount?

To the Officiating Judge of Zillah Bundlekhund, dated 11*th April*, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 2d instant, requesting the opinion of the Court regarding cases of appeal decided under the provisions of Clause 3, Section 16, Regulation V. 1831.

2. *Question* 1*st.* In reply to your first question I am directed to inform you that appeal cases so disposed of should be viewed as regular appeals, decided on their merits after a perusal of the record, as required by the Regulation, and should be entered as such in the monthly statements.

3. *Question* 2*d* The vakeels are entitled to the full remuneration awarded them by the Regulations in cases regularly decided on their merits.

4. *Question* 3*d.* No portion of the stamp duty should be returned.

The Presidency Court, on the 2*d May*, 1834, *concurred in this construction.*

April 11*th*, 1834.

To the Judge of Zillah Shahabad, dated 11*th April*, 1834.

No. 879.
1831.
Reg. VIII. Sec. 9.

I am directed by the Court to acknowledge the receipt of your letter of the 1st instant, and in reply to inform you, that they entirely concur with you in opinion that the collector exceeded his competency under Section 9, Regulation VIII. 1831, in referring summary suits to moonsiffs to be tried as regular.

The Western Court, on the 2*d May*, 1834, *concurred in this construction.*

April 11*th*, 1834.

Resolution of the Court of Sudder Dewanny Adawlut for the Western Provinces, held at Allahabad, on the 14*th February*, 1834.

No. 880.
1833.
Reg. II Sec. 5.
1829.
Reg. X Schedule B.

Resolved.—That with reference to the provisions of Section 5, Regulation II. 1833, under which the Courts of Sudder Dewanny Adawlut are authorized to dispose of all appeal cases received from the late Provincial Courts, "in the same manner as though "they had been regularly cognizable by and referred to or instituted before them," it is evidently the intention of the Government that the transfer of these cases should not occasion any additional hardship on the suitors, further than was unavoidable from their removal from one court to the other; that the Courts of Sudder Dewanny Adawlut are thus placed in the situation of the late Provincial Courts with regard to these cases and may receive petitions and vakalutnamehs, and give copies of decrees and other documents on paper bearing the stamp which was required by the provisions of Schedule B, Regulation X. 1829, for such papers in the late Provincial Courts.

To the Register of Sudder Dewanny Adawlut, Western Provinces, dated 14*th March*, 1834.

I am directed by the Presidency Court to acknowledge the receipt of your letter of the 14th ultimo, No. 46, forwarding a draft of a resolution, declaring that in appealed

cases received from the abolished Provincial Courts, the same stamps are to be used for petitions and vakalutnamehs, as were required for such papers in the late Provincial Courts.

2. The Presidency Court are of opinion that the words quoted in the Resolution cannot be held to authorize the use of a stamp of a different value, in cases received from the Provincial Courts under Regulation II. of 1833, from that required in cases before the Court under the rules in force before that Regulation was enacted, and that as the parties have the benefit of a final decision, they ought to pay the rates of the higher tribunal. They direct me to add further that they think that it would be objectionable to have two rates of stamps in use in the same court.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 14*th April*, 1834.

I am directed by the Court to acknowledge the receipt of your letter of 14th ultimo, in reply to the Court's letter of the 14th February, regarding the amount of stamp leviable in cases of appeal transferred from the Provincial Courts to the Sudder Dewanny Adawlut.

2. On further consideration of the subject the Court have determined to adopt the interpretation of the law proposed by the Presidency Court, and will be guided by it in their future proceedings.

3. As connected with this subject the Court are desirous of learning the opinion of the Presidency Court with regard to the stamp leviable on similar papers, (viz. petitions, vakalutnamehs, copies of decrees, &c.) in original suits transferred under the same Regulation II. 1833, from the late Provincial Courts to the zillah judges. By a parity of reasoning the stamp should apparently be that which has hitherto been required in the judge's court in cases instituted before it.

The Calcutta Court concurred in the construction contained in the third paragraph on the 2*d May*, 1837.

April 11*th*, 1834.

To the Joint Magistrate of Burdwan, dated 18*th April*, 1834.

No. 881.
1834.
Reg. II. Sec. 3.

I am directed by the Court to acknowledge the receipt of your letter of the 7th instant, No. 24, and in reply to inform you that the provisions of Section 3, Regulation II. 1834, are not applicable to prisoners detained on a requisition of security for good behaviour.

The Western Court, on the 16*th May*, 1834, *concurred in this construction.*

April 18*th*, 1834.

No. 882.

Held that a session judge is competent to impose a fine upon an officer of the magistrate's establishment guilty of negligence or disrespect, while in attendance at the sessions.

Extract of a letter from the Session Judge of Zillah Purneah to the Register of the Presidency Court of Nizamut Adawlut, under date the 2*d April*, 1834.

The accompanying roobukarry and English letter exhibit a difference of opinion which has arisen betwixt myself and the magistrate of this district, which I request you

will have the goodness to bring to the notice of the Court and solicit their orders respecting it.

A mohurrir belonging to the magistrate's establishment, attending upon me during the criminal sessions, is guilty of negligence and disrespect, and I impose a fine of four rupees upon him, and inform the magistrate that I have done so. The magistrate questions my competency to do this, and in support of his opinion quotes Section 5, Regulation VII. 1831.

To the Session Judge of Zillah Purneah, dated 18*th April*, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 2d instant, No. 18, and its enclosure, soliciting their opinion in regard to a difference which has arisen between you and the magistrate, in consequence of your having fined one of the magistrate's mohurrirs, who was attending on you during the criminal sessions, for negligence and disrespect.

2. In reply, I am directed to inform you that the Court are of opinion that you were competent, under the circumstances stated, to impose a fine on the mohurrir, and that Section 5, Regulation VII. 1831, quoted by the magistrate, is inapplicable to the case in question.

The Western Court, on the 16*th May*, 1834, *concurred in this construction.*

April 18*th*, 1834.

To the Commissioner of Circuit for the 4*th or Moradabad Division, dated* 18*th April*, 1834.

No. 883.
1834.
Reg. II, Sec. 2.
1821.
Reg. III Sec. 2, Cl. 3.

I am directed by the Court to acknowledge the receipt of your letter of the 3d instant, with its enclosure.

2. In reply, I am directed to inform you that under the terms of Section 2, Regulation II. 1834, assistants exercising the special powers described in Clause 3, Section 2, Regulation III. 1821, cannot in any case award a longer term of imprisonment than one month in lieu of stripes; they are however at liberty, as in other cases in which they deem the prisoner deserving of a degree of punishment beyond their competency, to return the case to the magistrate for the issue of final orders, stating their own opinion thereon.

The Presidency Court, on the 2*d May*, 1834, *concurred in this construction.*

April 18*th*, 1834.

To the Officiating Judge of Zillah Mynpooree, dated 16*th May*, 1834.

No. 884.
1833.
Reg. IX. Secs. 14 and 15.

Held that on the institution of a suit for rent before a judicial officer, proof must be required that the plaintiff has conformed to the rules laid down in Sections 14 and 15, Regulation IX. 1833: the nature of the proof will of course be such as the plaintiff is able to adduce.

The Presidency Court, on the 13*th June*, 1834, *concurred in this construction.*

May 16*th*, 1834.

From the Judge of Zillah Rajshahye to the Register of the Presidency Court of Sudder Dewanny Adawlut, under date the 22d March, 1834.

No. 885.

A party being in attendance on a criminal court on bail, to answer to a criminal charge, is not liable to arrest under civil process.

I beg to submit, for the consideration of the Superior Court, the following question, as a case has occurred in which a decision on the point is required.

2. Is an individual, charged with forgery before the magistrate, and who gives security through the agency of another to appear when called for, and is in attendance till his case come on, secure from arrest by an officer of the civil court in satisfaction of a decree?

3. I am aware that by the English law parties in actual attendance on a court of justice, are not liable to arrest on a civil action while so attending; but I apprehend a person cannot be construed to be in actual attendance, who has given security through another to appear when called for: admitting however this to be the case, our regulations, so far as I am acquainted with them, do not prohibit the service of civil process under such circumstances. The case of course supposes the individual is not seized in court, in the presence of the magistrate, or when his case has come on for a hearing.

From the Judge of Zillah Rajshahye to the Register of the Presidency Court of Sudder Dewanny Adawlut, under date the 30th April, 1834.

I have to request your obtaining a reply to my letter of the 22d March last to your address, on the subject of serving civil process on persons attending the cutcherry of a magistrate. A case of a similar nature to that already referred has now come on, in which a defendant is before the collector; and others of a like import will in all probability frequently occur. I have deferred issuing process of arrest against him, and have to request you will ascertain as soon as practicable the opinion of the Superior Court on the point submitted by me in my letter above alluded to.

Opinion of the Advocate General.

I certainly think that "according to the law of England" a person "attending in a criminal court on bail to answer to a criminal charge" is not liable to be arrested under civil process. I have thus answered the *general* question that has been put to me—of course I do not know whether any case of the kind exists at present; nor (if it does) what are the particulars of it; nor what might be my opinion of them. But it is a general rule that a person attending on a court of justice is entitled to protection from arrest.

To the Judge of Zillah Rajshahye, dated 23d *May,* 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 22d March and 30th ultimo, and, in reply to the question proposed in the first, to forward to you the accompanying copy of one from the solicitor to the Honorable Company dated the 13th instant, forwarding an opinion of the advocate general; and to inform you that the Court concur in the opinion that a party being in attendance on a criminal court on bail to answer to a criminal charge is not liable to arrest under civil process.

2. The Court will answer the question put in your second letter after they shall have consulted with the judges of the Western Court of Sudder Dewanny Adawlut.*

May 23*d*, 1834.

To the Commissioner of Circuit for the 19*th Division, dated* 13*th June*, 1834.

No. 886.
1824.
Reg. XV.

I am directed by the Court to acknowledge the receipt of your letter of the 27th ultimo, No. 602, and its enclosures.

2. The Court, understanding the point at issue between you and the magistrate of Balasore to be, whether you are competent to direct the magistrate to take up and enquire into a case under Regulation XV. 1824, he (the magistrate) not deeming such a measure necessary for the preservation of the peace, are of opinion, with reference to construction No. 430 of the printed construction book, and to the general powers of control vested in a commissioner, that you were competent to do so.

The Western Court, on the 11*th July*, 1834, *concurred in this construction.*

June 13*th*, 1834.

From the Commissioner of Circuit 5*th Division to the Register of the Nizamut Adawlut, Western Provinces, dated* 18*th June*, 1834.

No. 887.
1832.
Reg. III. Sec. 2, Cl. 2.

I have the honor to submit, for the consideration and orders of the Court of Nizamut Adawlut, the proceedings and reports noted in the margin,† received from the magistrate of Shahjehanpore, as I must be equally anxious with that officer to have the benefit of the Court's opinion on the question referred. It may be thus stated; whether the grounds set up for the defence in the case No. 1 can be legally maintained, namely, that the defendant (Yacoob Allee Khan,) having purchased the two children which he is accused of having stolen from the prosecutor, their parent, under a formal voluntary contract, and with the written sanction of the authority exercising the powers of magistrate at Jubulpoor, cannot be held liable to the penalty prescribed in Clause 2nd, Section 2, Regulation III. of 1832.

2. The Court will observe, from my letter to the magistrate in reply, the view I have taken of the proceedings in that case. It was written on a consideration of the report made to the register of the Nizamut Adawlut by the late superintendant of police of the Western Provinces, dated July the 19th, 1814, and of the construction of that Court of the provisions of Regulation X. of 1811, given in their orders to the magistrate of Agra, dated April the 23d, 1812. Vide Circular Orders No. 141, Baptist Mission Press edition.

3. I did not then refer to Regulation III. of 1832, which I have since done, and it may be, though I still entertain doubts on that point, that the prohibition therein

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* See Construction No. 893

† No. 1. Letter from Magistrate of Shahjehanpore, dated the 11th June, 1834, with one English enclosure and missel, in the case of Madaree versus Yacoob Allee Khan. No 2. Ditto ditto, dated 11th instant, with ditto ditto in the case of Mohummud Allee Khan.

enjoined, is applicable to this particular case as regards the purchase of the children of the defendant; if so, it would of course equally apply to the prosecutor.

4. On the other hand, as no parents can entail bondage upon their children, which this must be held to be, I conceive, considering the extended period of the contract to the 60th year of their age, I feel the question to be embarrassing for decision.

5. It must be known to the superior Court if, as alleged in the accompanying documents, the authorities at Jubulpore and Saugor and at other parts of that country where distress from famine unfortunately prevails, are authorized to attest to the disposal of children by their parents as hirelings, for a limited period, on the condition of their being fed and supported by the party engaging for them.

6. In regard to the second case, the petition of Mohummud Allee, I beg to be informed is the magistrate authorized to interfere in such cases?

From the Magistrate of Shahjehanpore to the Commissioner of Circuit, Bareilly, dated 11th June, 1834.

I have the honor to transmit a report from Mr. Rose, the joint magistrate of this station, in the case Madaree versus Yacoob Khan.

2. I have to request the favor of your transmitting it together with the accompanying proceedings, for the orders of the Nizamut Adawlut.

3. I wish to be furnished with instructions as to the course to be taken in like cases.

4. I have no doubt of the genuineness of the signature of Captain R. Low affixed to the deed of sale.

From the Magistrate of Shahjehanpore to the Commissioner of Circuit, Bareilly, dated 11th June, 1834.

I have the honor to transmit to you copy of a letter from Mr. Rose, the joint magistrate of this station, and copy of a petition of Mohummud Allee, stating that in consequence of the famine to the southward the British authorities have permitted the purchase of slaves, that he had in consequence purchased a girl there, and had entrusted her to Byram Khan, from whom she had run away, and claiming my interference to restore her to him.

2. I have to request the favor of your bringing the case before the Nizamut Adawlut, that I may be instructed how to proceed.

3. I may state that some time ago the girl made her appearance at one of the tannahs of this district in a starving condition, and that the tannahdar offered to take charge of her, which he was permitted to do until her natural guardian could be found.

From the Joint Magistrate of Shahjehanpore to the Magistrate of this District, dated 9th June, 1834.

Madaree versus Yacoob Allee Khan.

I have the honor to submit my proceedings in the case noted in margin.

2. The complainant prosecutes to recover two daughters aged 5 and 8 years, alleged to have been stolen by the defendant from the bazar of Jubulpore in the month of March or February last.

3. The defendant, who is a sowar in the regiment of irregular horse now stationed at Bareilly, rests his defence on the grounds that the children were sold to him and Abdoollah Khan, a jemadar in the same corps, by their parents; that the sale of children was universally customary in that part of the country in consequence of a famine, and that transactions of this nature were so far countenanced by the constituted authorities that regular bonds or deeds of sale were attested before them and duly registered in a book kept for that purpose.

4. In support of this assertion he produces an urzee from Abdoollah Khan, to the same effect, and a bond stating that the parents have for the sum of rupees 14, given up their children to the purchaser, Abdoollah Khan, to be disposed of in such way as he pleases until they attain the age of 60 years, on condition that they are to be supported by the purchaser.

5. This bond bears an order that after being verified by the different parties, the bond shall be registered, to which order are affixed certain initials alleged by the defendant to be those of the magistrate of Jubulpore.

6. The name of the individual disposing of the children, as contained in the bond, and that of the prosecutor are different, but this discrepancy in no way affects the right of the present complainant, as the defendant admits that he is the parent of the children, and accuses him of having fraudulently misrepresented his name before the authorities of Jubulpore.

7. As slavery is prohibited by our Government, I have restored the children to their parents.

8. I am desirous to receive instructions from you as to the mode of proceeding to be adopted with regard to the defendants.

9. If the case be proceeded in, it will be necessary to send the alleged bond to Jubulpore, in order that the authorities there may verify it or deny its authenticity.

From the Commissioner of Circuit, 5th Division, to the Magistrate of Shahjehanpore, dated 16th June, 1834.

I have the honor to acknowledge the receipt of your letter of the 11th instant, forwarding the proceedings held by the joint magistrate in the case of Madaree versus Yacoob Allee Khan, together with a report from that officer on the circumstances of it.

2. As the offence charged against the accused, namely, his having stolen two girls, aged 5 and 8 years, from the bazar of Jubulpore, took place (supposing it to be true) in the zillah of Jubulpore, it could not legally be tried by the joint magistrate of Shahjehanpore, upon the ground that all crimes must be tried in the jurisdiction within which they are perpetrated, unless he had obtained the special authority of the Nizamut Adawlut to conduct the trial under the provisions of Regulation VIII. of 1822.

3. The principles of the Mohummudan law authorize the sale of children by their parents in times of distress occasioned by famine and scarcity, and I am not aware of any existing Regulation of our Government containing a prohibition against the practice. If therefore the spirit of that law is allowed to be observed in our criminal courts, it is doubtless with the humane intention of preventing the greater evil, which would otherwise happen to the children, of being left to perish.

4. In the case referred, there seems to be sufficient evidence that the accusation against the defendant of having stolen the two girls is false, and that the contract for their sale between the prosecutor and the defendant did take place with the knowledge of the local authority at Jubulpore ; and if the magistrate had jurisdiction he would have found means of disposing of the case by applying to it the Circular Orders of the Nizamut Adawlut dated October 5th, 1814 (Baptist Mission Press Ed.), which contains the Court's construction in explanation of this subject of your present reference.

5. I will submit this case as you request to the superior Court, as well as that of Mohummud Allee referred to in your separate letter of the 11th of June, for their consideration and orders.

To the Commissioner of Circuit for the 5th Division, dated 27th June, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 18th instant, with its enclosures.

2. In reply to the question contained in paragraph 8 of Mr. Rose's letter of the 9th instant, I am directed to inform you that as it appears that the children in question were not purchased for importation and sale as slaves, the defendants cannot be considered liable to the penalty laid down in Clause 2, Section 2, Regulation III. 1832.

3. With regard to the case mentioned in Mr. Robinson's letter of the 11th instant, the Court direct me to state in reply to the 1st and 2nd paragraphs that the magistrate has no authority to interfere with a view to restore the child to the petitioner Mohumud Ali.

The Presidency Court, on the 18th July, 1834, *concurred in this construction.*

June 27th, 1834.

From the Judge of Zillah Dacca to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 24th June, 1834.

No. 888.
1806.
Reg. II. Sec. 4.

Regulation II. 1806, Section 4, invests judges with the power to commit to close custody defendants intending to abscond, or withdraw themselves from the jurisdiction of the court in default of furnishing security; but does not specify what course is to be pursued if the defendant shall have actually withdrawn himself from the jurisdiction of one zillah judge to that of another.

2. A case of this kind has arisen accompanied by difficulties. The judge of Moorshedabad has issued a perwanneh to his nazir to require security from, or apprehend a

foreigner, named Moollah Syud, now in this city for twenty-four days past, and backed it with a request to the judge of Dacca to cause its enforcement. The perwanneh has been brought hither by a single chupprassee, who has neither diet money for the prisoner, who is a man of respectable manner and appearance, nor boat hire for the purpose of conveying him to Moorshedabad. He (the Moollah Syud) at first made some objection to the enforcement, but on the matter being explained to him by the nazir he declared himself ready to accompany the chupprassee; who is not prepared to remove him. The question now is what should be done with him?

From the Judge of Zillah Dacca, dated 4th July, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 24th ultimo, No. 248, requesting the Court's opinion as to the course to be pursued under the circumstances therein stated.

2. In reply, I am directed to observe, that as the defendant was not within the limits of the district in which the suit against him was instituted, at the time the process issued under Section 4, Regulation II. 1806, was served upon him, the rule contained in that Section does not apply; and consequently that you should immediately release him, leaving the Moorshedabad court to decide the case pending *exparte*, if he fail to appear or defend the suit.

The Western Court, on the 25*th July,* 1834, *concurred in this construction.*

July 4*th,* 1834.

To the Commissioner of Circuit for the 7*th Division, dated* 4*th July,* 1834.

No. 889.

1803.
Reg XXXV. Sec. 3, Cl 4.
1808.
Reg IX Secs. 13 and 14.
1810
Reg. VI Secs. 3 & 4.
1812
Reg. III. Sec. 4.
1814.
Reg VIII.

*1808.
Reg. IX. Secs. 13 and 14.
1810
Reg. VI Secs 3 & 4.
1812
Reg. III Sec. 4.
1814.
Reg. VIII.

I am directed by the Court to acknowledge the receipt of your letter of the 23d ultimo, with its enclosures, regarding a case of alleged negligence, in apprehending an offender, on the part of the proprietor of the village of Anuthooa.

2. With regard to the point of constructions which you have stated in your second paragraph, viz. whether the provisions of Regulation XXXV. 1803, were applicable to the case in question, although no charge had been preferred by a private prosecutor, the Court observe that Clause 4, Section 3 of that Regulation, does not appear to them to contain any thing which can authorize the inference that a private prosecution was necessary to enable the magistrate to act; this opinion is moreover upheld by the terms of the corresponding enactments mentioned in the margin,* which are as follows:—" If a magistrate shall have cause to believe or suspect, &c."—This evidently leaves the magistrate at liberty to exert the authority vested in him by those provisions, whatever may be the means by which he has acquired the information tending to criminate the zemindar. The rule contained in the latter part of Section 4, Regulation IX. 1807, which regards criminal charges in general, and authorizes the issue of a magistrate's process on the report of a police officer or other credible information, may be considered equally applicable to charges of the description in question.

3. You are requested to send a copy of this letter to the acting magistrate of Banda for his information and guidance; the Persian papers are herewith returned.

The Presidency Court, on the 1st August, 1834, concurred in this construction.

July 4th, 1834.

To the Judge of Zillah Jessore, dated 11th July, 1834.

No. 890.

The rights and interests of a jotedar may be sold in satisfaction of a decree given aginst him.

I am directed by the Court to acknowledge the receipt of your letter of the 24th ultimo, and its enclosure, requesting the Court's opinion as to the liability of the jote jumma of a ryot to be sold in execution of a money decree provided the zemindar do not object to the measure.

2. In reply, I am directed to inform you that the Court are of opinion that the right and interest of the jotedar may be sold in satisfaction of a decree.

The Western Court, on the 5th September, 1834, concurred in this construction.

July 11th, 1834.

To the Commissioner of Circuit for the 15th Division, dated 18th July, 1834.

No. 891.

Magistrates how to proceed in certain cases of gambling.

I am directed by the Court to acknowledge the receipt of your letter of the 28th April last, No. 27, requesting the opinion of the Court as to whether persons found playing in gambling houses are punishable under the Regulations of Government by magistrates.

2. In reply, I am directed to inform you that the Court are of opinion that as the Regulations contain no specific enactment on this point, the magistrate should, in any case of doubt, take a futwa from the law officer, and proceed in conformity with his exposition of the Mahomedan law.

The Western Court, on the 5th September, 1834, concurred in this construction.

July 18th, 1834.

To the Judge of Zillah Cuttack, dated 25th July, 1834.

No. 892.

1818.

Reg. X. Sec. 5, Cl 1. C. O. 4th Jan. 1833, No 131.

I am directed by the Court to acknowledge the receipt of your letter of the 11th instant, and in reply to communicate to you their opinion that the provisions of Clause 1, Section 5, Regulation X. 1818, which specially require the judge to pass orders for the confinement of defaulters in the cases therein alluded to, are not affected by the Circular Order of the 4th January, 1833, which intended to provide for the cases of prisoners confined under decrees of collectors under Regulation VIII. 1831, which are not provided for by that Regulation.

The Western Court, on the 22d August, 1834, concurred in this construction.

July 25th, 1834.

To the Judge of Zillah Rajeshye, dated 1st August, 1834.

No. 893.

A person in attendance on a collector to defend a suit or claim, or on a magistrate to answer a criminal charge is protected from arrest under civil process.

In continuation of my letter of the 23d May last, No. 1024, I am directed by the Court to inform you that they are of opinion that a person being in attendance on a collector to defend a suit or claim pending before that officer is protected from arrest under civil process, in like manner as persons in attendance on a magistrate to answer a criminal charge; and that in either case the protection will last only as long as the party is in actual attendance or coming to or returning from the court.

The Western Court, on the 4th July, 1834, concurred in this construction.

August 1st, 1834.

From the Judge of Zillah Tirhoot to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 8th May, 1834.

No. 894.

1793.
Reg. XLIX.
C. O. S. D. A.
15th Nov. 1833.
No. 100.

A difference of opinion having arisen as to what suits are now cognizable by the courts under Regulation XLIX. 1793, since the receipt of the circular of the 15th November last, regarding suits referrible to the revenue authorities, I shall feel obliged by your obtaining for me the opinion of the Court on that point.

2. The third paragraph of that circular refers cases of dispossession of ryots by landlords to the collector, and I wish to be informed whether that includes all disputes for possession between landlord and tenant, and whether Regulation XLIX. 1793, is hereafter to include only disputes between proprietors of different estates and between proprietors and holders of rent-free and other fixed tenures within the estate.

3. As a case in point—a jaghiredar dies, by which all tenures held from him lapse, and the Government make a settlement with the proprietors of the village, who not being able to get the terms they require from the ryot, or from some private reasons perhaps, oust the ryot from the lands he held by pottah from the jaghiredar. The question as to the right to hold the lands at all, or on what terms, may be referred to a regular suit in the civil court; but in the interim, if the ryot wishes summarily to regain possession and hold the lands on the former terms until that point be decided, is his suit cognizable by the court under Regulation XLIX., or referrible to the collector under that circular? Rent is in this and must in every case *between landlord and tenant* be the cause of dispute, and therefore in my opinion, it comes within the intention of the circular in question, and is referrible to the collector.

4. If it were not so, a ryot might be placed in an awkard predicament, by the court upholding his possession on the former terms by Regulation XLIX. and the revenue authorities decreeing a higher rate of rent, and ousting him for non-payment of it, or giving power at the time of resumption to the proprietor, to make his own arrangements with other ryots.

5. In this district resumptions by Government are constantly taking place, and cases similar to the above may frequently occur, it is therefore desirable that the parties,

who are often indigo planters, may know to what authority they must apply for redress if they are ousted; in addition to which, it will prevent any clashing of authorities, a thing always to be avoided if possible.

To the Judge of Zillah Tirhoot, dated 22d August, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 8th May last, requesting to be informed what suits, since the issue of the circular order of the 15th November last, are cognizable by the judge under Regulation XLIX. of 1793, and in reply to inform you that as the Regulation in question has not been rescinded, parties forcibly dispossessed have still the option of resorting under its provisions to the civil court, any thing in the circular order notwithstanding. I am at the same time directed to add that as the particular case mentioned by you does not include violence, it is cognizable by the collector under the circular order of the 6th December last; Regulation XLIX. 1793, under the construction No. 39 of the printed construction book, being applicable only "to cases of dispossession by force amounting to breach of the peace."

The Western Court, on the 25th July, 1834, *concurred in this construction.*

August 22d, 1834.

To the Judge of Zillah Furruckabad, dated 5th September, 1834.

No. 895.
1833.
Reg. IX.

I am directed by the Court to acknowledge the receipt of your letter of the 26th ultimo.

2. In reply, I am directed to inform you that the decisions of punchaets appointed under Regulation IX. 1833, should be enforced by the revenue authorities, the judicial functionaries having no power to carry them into effect.

The Presidency Court, on the 26th September, 1834, *concurred in this construction.*

September 5th, 1834.

From the Judge of Zillah Moradabad to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 29th April, 1833.

No. 896.
Mode of proceeding on the records of a moonsiff's court having been destroyed by fire.

I do myself the honor to acknowledge the receipt of your letter of the 15th ultimo, together with a copy of a letter from the secretary to Government, dated the 23d February, authorizing me to procure from the collector's office and furnish the parties, in the nineteen cases destroyed by fire, in the moonsiff's office at Rajpoorah, with stampt paper, to enable them to institute their suits anew free of expence.

2. The orders of Government will be attended to in this respect; but I beg to state that the whole of the papers in the eleven undecided cases, noticed in the 8th paragraph of your letter, were reported by me to have been also burnt with the recorded decision of the moonsiff—in all thirty cases.

3. As I conceive the object of Government is to enable the parties to sue again without a repetition of expence, I conclude that the persons interested in the thirty cases were all intended to have been included in the indulgence; but I take the precaution, as nineteen cases were only specified in the letter of the secretary, to solicit the orders of the Court.

From the Register of the Western Provinces to the Judge of Zillah Moradabad, dated 10th May, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 29th ultimo, in reply to the Court's orders of the 15th.

2. With regard to the eleven suits in which a decision has been already passed, the Court deem it desirable that every means should be tried of ascertaining the nature of the judgment already passed, previous to the adoption of any further measures which would be attended with much inconvenience; you will be pleased therefore to make strict enquiry among the parties and their wukeels, the moonsiff himself and the books of his office, for a copy or notes containing the substance of the decree. If such should be obtainable the moonsiff would be enabled from them to draw up another decree. It would also be advisable, where such documents are not to be found, that the parties and wukeels be questioned as to the nature of the decree passed, and if they agree on this point, the moonsiff may draw up his decree from their statement. If after every method has been tried some cases should still remain, regarding the judgment in which no information can be obtained or any doubt may remain, you will be pleased to report specially to this Court regarding them; stating fully the measures which you have adopted ineffectually with the view to discover the contents of the decree.

From the Judge of Zillah Moradabad to the Register of the Western Provinces, dated 23d July, 1834.

With reference to my letter of the 12th January, your letter of the 13th March, my letter of the 29th April, and your reply of the 10th May, 1833, I do myself the honor to state, that of the eleven plaintiffs in the eleven cases decided, the records of which were burnt in the cutcherry of the moonsiff of Rajpoorah, one plaintiff only, a bunyah named Heeraloll, who had obtained a decree for 129 rupees, half anna, has come forward to solicit that he may be permitted to institute a suit anew, or enforce the decree already obtained.

2. On his presenting a petition to that effect, I directed the defendant to attend, with a view to making the sort of enquiry pointed out in your letter of the 10th May, 1833. One defendant is dead; the other, his son, states that the case was at issue between his father, who is dead, and the plaintiff rather than with himself, that the demand was an unjust one, and that it was his intention to have appealed against the decision, when the papers being burnt, and he having no copy of the decree, he was unable to do so.

3. This defendant was supposed with his father to have made the attack on the cutcherry of the moonsiff, and to have burnt the records; they were tried on the charge by the magistrate of Suheswan but acquitted.

4. Of the eleven cases alluded to in my letter as decided, decrees had been passed in six, in two cases the amount decreed has been realized by the parties; in one the plaintiff holds the decree, a copy of which he has obtained; in two cases the parties have not appeared though notice was served on them: in the case of Heeraloll versus Kureemoolla and Shumsooddeen, I beg to be favored with the orders of the Court. A copy of my proceeding of the 14th ultimo is herewith forwarded.

From the Register of the Western Provinces to the Judge of Zillah Moradabad, dated 8th August, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 23d ultimo, regarding the records of the moonsiff's office destroyed by fire in August, 1832.

2. With regard to the case of Heeraloll versus Kureemoolla and another, the Court conclude that no note or memorandum of the moonsiff's decision has been found, and that your present reference is made in pursuance of the Court's orders of the 10th May, 1833: previous however to passing further orders, the Court request that you will ascertain, and state for their information, the date of the decree in question, for the purpose of determining whether the period of appeal had elapsed previous to the occurrence.

From the Judge of Zillah Moradabad to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 25th August, 1834.

I do myself the honor to acknowledge the receipt of your letter of the 8th instant, relative to the case of Heeraloll versus Kureemoolla and others, the records of which were destroyed by fire in the office of the moonsiff of Rajpoorah in August, 1832.

2. In reply, I beg to state that I had ascertained that there were no notes of the case in question, or memorandum of the moonsiff; that a decree was passed in favor of the plaintiff appears only by a list furnished after the occurrence from a memorandum which was in the hands of a wukeel of the moonsiff's court: the decree was passed on the 25th August, and the attack on the cutcherry of the moonsiff was made on the 29th of the same month, four days therefore had only elapsed from the date of the decree when the papers were destroyed.

To the Judge of Zillah Moradabad, dated 5th September, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 25th ultimo, in reply to the Court's order of the 8th of the same month.

2. As it appears that a decision was actually passed by the moonsiff in the case in question in favor of the plaintiff, you will be pleased to cause the moonsiff to draw up a decree to that effect, and having duly attested it to deliver copies to the parties agreeably to the regular practice of the court. It will be unnecessary and probably impracticable to mention the grounds of the decision, but if the moonsiff is able to do so there is no objection to his recording them. Any party considering himself aggrieved by the decision will be left to seek redress by appeal.

The Presidency Court, on the 3d October, 1834, *concurred in this construction.*

September 5th, 1834.

To the Officer in Charge of the Office of Judge of Rungpore, dated 5th September, 1834.

No. 897.
1793.
Reg. XLV. Sec. 2.
1832.
Reg. VII. Sec. 16.

I am directed by the Court to forward to you the accompanying copy of a letter from the judge of zillah Dacca, dated the 21st ultimo, No. 313, requesting to be informed, in consequence of a difference of opinion with you, whether "lands paying revenue can be "sold in satisfaction of decrees, being putnee talooks and other saleable tenures as con-"templated in Section 16, Regulation VII. 1832, without a report under Regulation "XLV. 1793, Section 2, to the commissioner of revenue."

2. The Court direct me to refer you to construction No. 349 of the printed constructions, and to observe that as the public sale of putnee and dur-putnee tenures in execution of decrees must be conducted by the collector, the report required by Section 2, Regulation XLV. 1793, must be made to the commissioner of revenue.

September 5th, 1834.

Extract from a Letter from the Judge of Zillah Dacca to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 23d June, 1834.

No. 898.
1806.
Reg. XVII. Sec. 8.
Construction No. 80, March 14th, 1811, and No. 105, June 25th, 1812.

Para. 5. I also beg as a rule of practice to be informed if a mortgagee can, in the opinion of the Court, be admitted to sue for recovery of the amount mortgage money, without shewing good cause why he does not sue for the property mortgaged; also generally whether he has his election between them, to sue for whichever he may think most to his advantage.

To the Judge of Zillah Dacca, dated 5th September, 1834.

In continuation of my letter of the 11th July last, No. 1303, I am directed by the Court to communicate to you, in reply to the question contained in the 5th paragraph of yours of the 23d June last, their opinion and that of the Western Court of Sudder Dewanny Adawlut, that if the mortgage in question be of the nature of a conditional sale, and the money be not repaid, the lender, unless good and sufficient cause be shewn, can only sue for possession of the property pledged, and has not the election of suing to recover the money or to be put in possession of the property, as he may deem most advantageous to his own interest.

September 5th, 1834.

From the Register of the Western Provinces to the Register of the Presidency Court, dated 12th September, 1834.

No. 899.
1834.
Reg. II. Sec. 3.

I am directed by the Court to request that you will submit, for the opinion of the Presidency Court, the following question which has arisen in the course of a correspondence with the session judge of zillah Gorruckpore.

2. Under the provisions of Section 3, Regulation II. 1834, the crime of "forgery" renders the offender still liable to a sentence of hard labor in irons; it is questioned

whether the term "forgery" used in the Regulation can be construed to comprehend the crime of issuing forged coin, documents, &c. knowing them to be forged.

3. The Court are of opinion that as the enactment is of a penal nature, the letter of it must be strictly adhered to, and that the crime of "knowingly issuing" would not therefore subject an offender to labor in irons.

The Presidency Court, on the 3d October, 1834, *concurred in this construction.*

September 12*th*, 1834.

To the Officiating Commissioner of Circuit for the 12*th Division, dated* 12*th September*, 1834.

No. 900.
53 Geo. III. Cap. 155, Sec. 105. C. O. N. A. No. 57. Sept. 3d, 1830.

I am directed by the Court to acknowledge the receipt of your letter of the 29th July last, No. 335, and its enclosures; and, with reference to the accompanying copy of a letter from the secretary to Government in the Judicial Department, dated the 8th instant, No. 1611, from which it appears that Mr. H. C. Hamilton is to be considered as possessing the full powers of joint magistrate at Monghyr, to inform you that, under the opinion of the advocate general, circulated for general information on the 3d September, 1830, no appeal lies to you from his order for fining Mr. John Mackay in the case of Ram Dyall versus Mr. John Mackay and others, although Mr. Hamilton is not vested with the powers of a justice of the peace, and to request that you recall and cancel the order passed by you on the 16th July last.

September 12*th*, 1834.

To the Judge of Zillah Furruckabad, dated 26*th September*, 1834.

No. 901.
Deputation of vakeels to make local enquiries.

I am directed by the Court to acknowledge the receipt of your letter of the 15th instant, requesting to be informed whether you are at liberty to depute vakeels of your court to make local enquiries as ameens.

2. In reply, I am directed to inform you that the Court are aware of no Regulation which prohibits the practice, but they consider the measure as of doubtful expediency in general.

The Presidency Court, on the 24*th October*, 1834, *concurred in this construction.*

September 26*th*, 1834.

To the Judge of Seharunpore, dated 26*th September*, 1834.

No. 902.
It is not competent to a court to attach the salary of a military officer in execution of a decree of court.

I am directed by the Court to acknowledge the receipt of your letter of the 12th instant.

2. In reply, I am directed to inform you that you are not competent to attach the salary of Arthur Hall, Esquire, of the 5th cavalry, in satisfaction of a decree of your court.

The Presidency Court, on the 24*th October*, 1834, *concurred in this construction.*

September 26*th*, 1834.

To the Commissioner of Circuit for the 18th Division, dated 3d October, 1834.

No. 903.
1813.
Reg. II.

I am directed by the Court to acknowledge the receipt of your letter of the 15th ultimo, (No. 1250) and its enclosures: and in reply to inform you that they concur in the opinion expressed by you that the provisions of Regulation II. of 1813, are still applicable to native officers employed in the commercial department entrusted with public money, and are not affected by the provisions of Regulation IX. of 1829.

The Western Court, on the 14th November, 1834, *concurred in this construction.*

October 3d, 1834.

To the Judge of Zillah Dacca, dated 3d October, 1834.

No. 904.
1814.
Reg. XXVIII. Sec 5.

I am directed by the Court to acknowledge the receipt of your letter of the 18th ultimo, No. 351, and in reply to inform you, that a plaintiff originally admitted to sue as a pauper under Section 5, Regulation XXVIII. of 1814, who may subsequently, while the suit is pending, become possessed of property of sufficient amount to nullify his plea of poverty, may in the opinion of the Court, be called upon to pay up the original stamp duty in lieu of the institution fees, &c. under the penalty, in the event of his neglecting to do so, of being non-suited.

The Western Court, on the 7th November, 1834, *concurred in this construction.*

October 3d, 1834.

Extract of a letter from the Officiating Commissioner of Circuit for the 19th Division to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 16th Sept., 1834.

No. 905.
1793.
Reg. XXXVI.
1812
Reg. XX.

I beg strongly to urge the propriety of empowering one of the assistants stationed at Balasore to receive and register deeds presented to him by the inhabitants of that neighbourhood.

To the Officiating Commissioner of Revenue and Circuit 19th Division, dated 3d October, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 16th ultimo, No. 984, and its enclosure, and in reply to inform you that as Balasore is not the sudder station of a district, a registry office cannot, under the existing regulations, be established there.

October 3d, 1834.

To the Session Judge of Mynpoorie, dated 10th October, 1834.

No. 906.
An order for commitment made by a

I am directed by the Court to acknowledge the receipt of your letter of the 25th ultimo, requesting the opinion of the Court whether an order of commitment made by

a joint magistrate residing at the sudder station without independent jurisdiction, is liable to reversal by the magistrate of the district.

joint magistrate residing at the sudder station without independent jurisdiction, is not liable to reversal by the magistrate of the district.

2. In reply, I am directed to inform you that a magistrate is not competent to reverse such a commitment, a power which can be exercised only by the session judge on trial of the case, or by the commissioner of the division.

The Presidency Court, on the 24th October, 1834, concurred in this construction.

October 10th, 1834.

To the Commissioner of Circuit for the 1st Division, dated 10th October, 1834.

No. 907.
1816.
Reg. XVII.
Sec. 7, Cl. 4—7.
1831.
Reg. XI. Sec. 8.

I am directed by the Court to acknowledge the receipt of your letter of the 24th ultimo, requesting the opinion of the Court whether a commissioner can receive appeals from subordinate police officers drawing a salary below ten rupees, who may have been dismissed by the magistrate.

2. The Court observe that the provisions of Clauses 4 to 7, Section 7, Regulation XVII. 1816, allow an appeal to officers of a certain specified description in cases of this nature; as however this Section has been wholly superseded, and the terms of Section 8, Regulation XI. 1831 include all police officers of whatever denomination, without reference to the amount of their salary, the Court are of opinion that appeals from such orders may be received from any police officer, whether his salary be above or below the sum of ten rupees.

The majority of the Calcutta Court, on the 7th Nov. 1834, *concurred in this construction.*

October 10th, 1834.

From the Register of the Western Provinces to the Register of the Presidency Court, dated 10th October, 1834.

No. 908.
1831.
Reg. V.
Sec. 26, Cl. 3 and 4.

I am directed by the Court to transmit, for the purpose of being laid before the judges of the Presidency Court, the annexed copy of a letter from the judge of Meerut of the 2d instant, and its English enclosures.

2. With reference to the concluding paragraph of the judge's letter, the Court propose to inform him that the respective powers of judges and commissioners, regarding the suspension of moonsiffs, are distinctly laid down in Clauses 3 and 4, Section 26, Regulation V. 1831: Clause 3 expressly vests the judge with the authority to suspend on urgent necessity; Clause 4 of the same Section also defines the power of a commissioner to extend to recommending the removal of a moonsiff, with the proviso that the recommendation shall be submitted to the Sudder Dewanny Adawlut through the judge: as the regulations do not therefore vest the commissioner with the power to suspend, the Court are of opinion that the commissioner in the case in question exceeded his

powers, and should the Presidency Court concur, this opinion will be communicated to that officer and to the session judge.

The Presidency Court, on the 7th November, 1834, *concurred in this construction.*

October 10*th,* 1834.

From the Register of the Western Provinces to the Register of the Presidency Court, dated 17*th October,* 1834.

No. 909.

Held that under the urgent circumstances of the case, the commissioner of circuit (also superintendant of police) was justified in directly interfering with the management of a criminal jail.

I am directed by the Court to transmit, for the purpose of being laid before the Presidency Court, the annexed copy of a letter from the commissioner of the Delhi division, dated the 29th ultimo, together with the original papers which accompanied it.

2. It appears that on the occasion of a riot attended with the escape of nine convicts from the jail of Hissar, the commissioner, in the absence of the magistrate, sent for certain prisoners from the jail with a view to holding an investigation; the commissioner also sent for and took the depositions of certain prisoners who were at work on the roads. The magistrate has objected to this exercise of authority, and the point in question is referred for the Court's decision.

3. Although it has been already ruled by the two Courts that a commissioner has no authority to interfere directly with the internal mangement of the jail by issuing direct orders to the jailor, the Court are of opinion that, under the urgent circumstances of the present case, the commissioner was fully authorized to act as he did; more especially as the magistrate was at a distance and much delay would have attended a reference to him; as superintendant of police also it was the duty of the commissioner to enquire strictly into the circumstances attending the very serious outrage which had occurred, attended, with the death of no less than fifty-two of the convicts; and he cannot therefore be considered to have exceeded his powers in sending for the prisoners with a view to hearing their statements on the subject.

4. Should the Presidency Court concur in this opinion, the commissioner will be informed accordingly. Whatever may be the decision on the point under consideration, the Court propose to express their entire disapproval of the order issued by the magistrate to the jailor, prohibiting him from attending to the requisitions of this nature made on him by the commissioner. It was obviously his duty to have complied with the orders of his superior officer on any doubtful point, pending a reference to a higher authority.

The Presidency Court, on the 14*th November,* 1834, *concurred in this construction.*

October 17*th,* 1834.

No. 910.

Course adopted in regard to signing a decision left unsigned by the late judge of the court in which it was passed.

To the Officiating Judge of Zillah Sylhet, dated 17*th October,* 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 15th ultimo, requesting to be informed whether, under the circumstances stated, you could sign a decision left unsigned by the late judge, Mr. Campbell.

2. In reply, I am directed to inform you that you should examine the vakeels of the parties in whose presence the decision was given, and the person who wrote it out, and compare it with any note book in the hand writing of Mr. Campbell which may be forthcoming; and that, unless the result of these enquiries should lead you to doubt the genuineness of the decision, you should sign it—making a short memorandum explaining why it was signed by you.

October 17th, 1834.

To the Register of the Presidency Court of Sudder Nizamut Adawlut, dated 30th Sept., 1834.

No. 911.

Power of a joint magistrate without independent jurisdiction to make commitments to the sessions.

I have the honor to beg you will ascertain from the Court whether an assistant with full powers of joint magistrate (as in the instance of Mr. Assistant Carruthers specially deputed by Government to Mymensing) can commit cases for trial before the session judge, without the sanction of the magistrate, when the latter is at the station, and has not formally made over his office to such assistant.

To the Commissioner of Circuit for the 15th Division, dated 17th October, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 30th ultimo, No. 54, and its enclosures: and in reply to inform you that as it appears from a letter from the secretary to Government to my address, dated the 22d ultimo, that Mr. M. W. Carruthers has been appointed joint magistrate in zillah Mymensingh, he is competent, under the sixth paragraph of the resolutions of Government of the 1st November, 1831, unless he has been expressly interdicted by the magistrate, to commit prisoners for trial to the sessions court, and that it is not necessary for the magistrate to revise his commitments.

October 17th, 1834.

From the Judge of Zillah Backergunge to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 25th August, 1834.

No. 912.

1800.
Reg. I.

I have the honor to nominate, for the approval of the Court of Sudder Dewanny Adawlut, Rajchunder Chuckerbutty to act as the guardian of Mohesh Chunder Nag, a minor and heir to Gopee Kishen Nag, and Bhawanee Pershad Banerjee to act as guardian to Mussummaut Hur Mohunee, minor and heiress to Ram Kishen Chuckerbutty.

2. Copies of two proceedings dated 26th July, 1834, and two statements prescribed by the Court's circular orders of the 14th December, 1832, are herewith transmitted.

3. In forwarding the above documents to the Court, I beg leave to bring to its notice that the estates which are stated to belong to these minors, are tenures paying revenue to zemindars and others, and not immediately to Government.

4. Under these circumstances, I should have declined nominating guardians to the minors under the provisions of Regulation I. 1800, (which I had understood to provide for

the appointment of guardians only to heirs of joint undivided estates, paying revenue immediately to Government,) had not the practice of the former judges of this court been in opposition to my opinion on this subject.

5. I shall feel obliged therefore by your obtaining the Court's orders on this point for my future guidance.

To the Judge of Zillah Backergunge, dated 24th October, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 25th August last, and its enclosures, and in reply to inform you that the Court, being of opinion that there is nothing in the provisions of Regulation I. 1800, which restricts its application to the case of minor heirs of joint undivided estates paying revenue immediately to Government, sanction the appointment of the following guardians:

1. Rajchunder Chuckerbutty to be guardian of Mohesh Chunder Nag, minor heir of Gopee Kishen Nag.

2. Bhawanee Pershad Banerjee to be guardian of Mussummaut Hur Mohunee, minor heir of Ram Kishen Chuckerbutty.

October 24th, 1834.

To the Officiating Commissioner of Circuit, 11th Division, dated 31st October, 1834.

No. 913.
1819
Reg VII.
Sec. 6, Cl. 3.

In reply to the question submitted in the 2d paragraph of Mr. C. W. Smith's letter, I am directed to inform you that the provisions of Regulation VII. of 1819, do not limit the sum which may be recovered in the criminal court as wages; and that, under the Court's construction contained in a letter to the commissioner of circuit of the 14th division, dated 7th January, 1831, (No. 582, of the printed construction book), the servant may sue in the criminal court to recover wages for any period not exceeding one year.

The Western Court, on the 28th November, 1834, *concurred in this construction.*

October 31st, 1834.

From the Secretary to Government in the Judicial Department to the Register of the Presidency Court of Nizamut Adawlut, dated 25th August, 1834.

No. 914.
1831.
Reg. IX Sec. 3.

I am directed by the Honorable the Vice-President in Council to transmit, for the information and guidance of the Court, the annexed copies of correspondence with the Court of Nizamut Adawlut at Allahabad, on the construction of Section 3, Regulation IX. 1831, and the powers vested in commissioners of circuit.

From the Register of the Western Provinces to the Secretary to the Government of Bengal in the Judicial Department, dated 25th July, 1834.

I am directed by the Court to transmit, for the perusal of the Honorable the Vice-President in Council, the annexed copies of minutes of the judges of this Court, and of a

correspondence which has taken place with the Presidency Court, relative to Section 3, Regulation IX. 1831.

2. A doubt has arisen with regard to the intention of the legislature in the provision of the Section above mentioned, the terms of which are far from being clear and precise, and have given rise to conflicting interpretations both in the Nizamut Adawlut and the subordinate courts, thus occasioning a variety of practice which it is very desirable to check by setting at rest the point in which they have originated. On a former occasion the Court communicated with the Presidency Court regarding the construction to be put on the enactment, when, as will be observed from the enclosed correspondence, that Court expressed their opinion that a reference on the subject should be made to the Government.

3. The question regards simply the meaning which should be attached to the words "cases of a miscellaneous nature other than criminal trials," which by that Section are declared exempt from the cognizance of the Courts of Nizamut Adawlut, and open to no appeal except to the commissioner of circuit in his capacity of superintendent of police, whose decisions are stated to be subject to revision only by a civil court on a regular suit.

4. The opinions of the judges of this Court, as well as those of the Presidency Court, will be found in the annexed correspondence. Mr. Scaly was absent on leave during the discussion, but I am directed to state that he considers the provision in question to have been intended to relieve the Courts of Nizamut Adawlut of the duty of hearing the numerous appeals presented from the decisions of the magistrates and their assistants; that with this view the Regulation withdrew from their cognizance all cases except "criminal trials," the term then generally used to designate cases regularly committed and tried at the sessions, declaring that all other cases should be appealable only to the commissioners as superintendents of police, from whose decision no further appeal lies to the Court of Nizamut Adawlut; that if the term "criminal trial" be understood with the latitude given it in the resolution of the 4th May, 1832, the Regulation would be attended with no relief to the Court. It will be observed that the opinions recorded are confined in a great measure to determining whether cases of particular descriptions can be understood as coming within the term.

5. As however cases are continually occurring which gives rise to doubt and discussion, from the uncertainty felt with regard to the intention of the legislature, the Court concur with the Presidency Court in deeming it highly advisable that the point should be finally decided by the Government.

MR. TURNBULL'S MINUTE.

The wording of the section is not so clear as could have been desired. But my reading of it is this. By Section 24, Regulation IX. of 1807, the Nizamut Adawlut—the then chief controlling authority over the whole of the criminal courts of inferior jurisdiction—was empowered to call for the proceedings of those courts in all cases of whatever

description, and to pass such orders thereon as might appear just and proper. It has been the obvious intention of Government in the enactments of late years, to limit the powers of this Court, to transfer a portion of its authority to the commissioners of circuit, and, in certain cases, to reserve the ultimate decision to itself. Thus in the section in question, Section 24, Regulation IX. of 1807, is declared to be modified, and the power of interference which was thereby vested in this Court, has been limited and is now restricted to *criminal trials*—that is, to cases involving a judicial investigation on a criminal charge and a judicial award. In all other cases, which as contra-distinguished from criminal trials, have always been understood as comprehended in the term "*miscellaneous*," and are therefore so designated in the section, the appellate authority has been transferred to the commissioners of circuit, with the reservation of further appeal to the Governor General in Council, in those cases in which the party deeming himself aggrieved, may prefer that course instead of resorting immediately to the civil courts, as in cases of forcible dispossession or other actionable cause, or in which the nature of the case may be such as not to admit of remedy by civil action, as in the cases of alleged injustice towards the native officers of Government, police or ministerial, by magistrates or others to whom they are subordinate. For the one the ordinary remedy by suit is provided for, the other by appeal to the Government.

The section in question was introduced by Government. It was not included in the original draft of Regulation IX. of 1831, as submitted by the Nizamut Adawlut at the Presidency; and although I have no doubt myself as to its true intent and meaning, it is certainly desirable, as suggested by Mr. Colvin, that the proper interpretation should be strictly defined and declared.

Resolution of the Presidency Court of Nizamut Adawlut, under date the 7th November, 1834.

Read a letter from the secretary to Government in the Judicial Department, dated the 25th August last, No. 1556, forwarding copy of one from the register of the Nizamut Adawlut in the Western Provinces to the secretary to Government in the Judicial Department, dated the 25th July last, and of the secretary's reply and the correspondence connected therewith, regarding the construction of Section 3, Regulation IX. of 1831.

2. The Court observe that the construction contained in Mr. Turnbull's minute of the 7th June, 1833, which the Honorable the Vice-President in Council requests, (in paragraph 2 of a letter of the secretary to Government in the Judicial Department to the register of the Nizamut Adawlut in the Western Provinces, dated the 25th August, 1834,) may be adopted by the Courts, is conformable to the present practice of this Court. It is however desirable that each judge should be furnished with a copy of Mr. Turnbull's minute and of the secretary's letter above cited, to be bound up with his Regulations. The register will accordingly be pleased to cause copies to be made for this purpose.

3. With reference to the 4th paragraph of the letter to the register of the Western Court above cited, the Court observe that the only order that has been issued to the commissioners regarding the exercise of the powers vested in them as superintendents of

police, is the circular order of the 26th October, 1832. As this merely enjoins caution in the exercise of the magisterial powers vested in them, and cannot be considered as "tending to lead those officers to suppose that they ought not to exercise the powers "vested in them by the Regulations," the Court do not deem it necessary to issue any orders modifying it.

November 7th, 1834.

From the Judge of Zillah Furruckabad to the Register of the Western Provinces, dated 11th November, 1834.

No. 915.

1831.
Reg. V. Sec. 5, Cl. 1.

I have the honor to request the instructions of the Court on the following points :

1st. Deokenundun and Lawaram, plaintiffs, and Nundram, defendant, all reside in the village of Dhukraee, of which the revenue jurisdiction belongs to Furruckabad and the police and civil to Mynpoorie.

2d. Plaintiffs have sued defendant summarily for rupees forty-seven for rent and obtained a decree from the collector at Furruckabad.

3d. Nundram has petitioned that he intends to prosecute a suit in the civil court to reverse the decision, but that the moonsiff of Chibramowe, in this district, declines to receive the suit on the grounds that neither of the parties reside, nor has the cause of action arisen, within his jurisdiction.

4th. I conceive the suit to be cognizable in this district, because the summary decision, which is the cause of action, arose within its limits, and that the judge might at once receive the suit.

5th. But by Section 10, Regulation VII. 1832, these suits are declared cognizable by moonsiffs, and Nundram of course prefers the moonsiff's court from the smaller expense which will be incurred.

6th. As neither party reside within this district, the question is by what moonsiff is the suit cognizable ? Is it to be considered in that moonsiff's jurisdiction in which the collector's office is situated, or as the collector has authority over the whole district, is the suit receivable by any moonsiff within its limits—the residence of defendant furnishing no guide ?

7th. The present plaintiff, Nundram, prefers the moonsiff of Chibramowe, which is only three cos from his village, Dhukraee, whereas that village is thirteen cos from the city of Furruckabad and sixteen cos from Mynpoorie.

To the Judge of Zillah Furruckabad, dated 21st November, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 11th instant, requesting the opinion of the Court regarding a point of jurisdiction in certain cases.

2. In reply, I am directed to inform you that the case mentioned in your communication should be heard by the moonsiff of the Mynpoorie zillah, in which jurisdiction

the cause of action arose; the civil authorities of zillah Furruckabad, having no jurisdiction in the village of Dhukraee, cannot take cognizance of the plaintiffs' claim.

The Presidency Court, on the 5th December, 1834, *concurred in this construction.*

November 21*st*, 1834.

From the Judge of Zillah Dacca to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 8th September, 1834.

No. 916.
1806.
Reg. II. Sec 5.

The circular order of the 17th February, 1816, No. 50, which contains directions as to the method of preserving lands attached for sale in satisfaction of decree from the sheriff of Calcutta, makes no reference to lands or property attached under Section 5, Regulation II. 1806, though for obvious reasons the precaution in such cases is equally necessary. This Court has been moved to attach certain indigo factories and indigo, the property of Mr. E. K. Hume; but unless some precaution of this nature be observed, there can be no difficulty in his obtaining, by some fiction of law, a counter-attachment from the Supreme Court; and then the prosecutors may look in vain to the attached property for the execution of the decree. I request you will bring this letter to the notice of the Court without delay, and I solicit instructions to depute an officer to remain on the spot and hold the property in attachment till countermanded. Under the provisions of the Regulation I do not feel authorized to take his step without authority of the superior Court.

To the Judge of Zillah Dacca, dated 21*st November,* 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 8th September last, No. 333, and in reply to the question therein proposed, to inform you that the same course should be pursued in cases of attachment under Section 5, Regulation II. 1806, as when the attachment is made in execution of a decree, the ulterior object in both cases being the same.

The Western Court, on the 19*th December,* 1834, *concurred in this construction.*

November 21*st*, 1834.

From the Judge of Allahabad to the Register of the Western Provinces, dated 28*th November,* 1834.

No. 917.

Power of courts to return original powers of attorney after attesting them.

I beg to submit the following points for the orders of the superior Court:

2. A general power of attorney written on stamped paper of four rupees, as required in Schedule A, Regulation X. of 1829, has been presented for the purpose of being attested, with a request that it may be given back to the party after acknowledgment. The practice of this Court hitherto has been to retain such moktarnamehs, allowing individuals to take copies of them on the same stamped paper as prescribed for the original deed.

3. It appears to me that this practice subjects individuals to very unnecessary expense, and I beg to submit whether such powers of attorney may be given back to the parties after being duly attested or acknowledged.

To the Judge of Allahabad, dated 28th November, 1834.

I am directed by the Court to acknowledge the receipt of your letter of this date.

2. In reply, I am directed to inform you that you are at liberty to return the original powers of attorney described in your letter to the parties filing them, at your own discretion.

The Presidency Court, on the 2d January, 1835, *concurred in this construction.*

November 28th, 1834.

To the Judge of Zillah Dacca, dated 28th November, 1834.

No. 918.

Collector not competent to issue a perwaneh to a moonsiff, to sell property attached for arrears of revenue.

I am directed to acknowledge the receipt of your letter of the 6th instant, No. 380.

2. The Court, understanding your question to be whether a collector can, without application to the judge, issue a perwaneh to a moonsiff to sell personal property and houses attached by his nazir, for arrears of public revenue, direct me to communicate their opinion that he is not competent to do so.

The Western Court, on the 26th December, 1834, *concurred in this construction.*

November 28th, 1834.

From the Judge of Zillah Juanpore to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 25th November, 1834.

No. 919.

1831.
Reg. V Sec. 5.
1814
Reg. XXVIII. Sec. 4.

I request you will be pleased to obtain for me the opinion of the Sudder Dewanny Adawlut regarding the power of a moonsiff to try suits, instituted for the purpose of recovering damages, said to have been sustained from the lands of the plaintiff having been kept out of cultivation by the opposition of the defendant having prevented the plaintiff from receiving his customary share of water to irrigate his fields. Section 5, Regulation V. of 1831, declares that the cause of action shall be for money, or for real or personal property, or for the value of such real or personal property, and would imply that the thing sued for would not comprehend damages of the nature abovementioned; but the Regulation also defines what damages the moonsiff should *not* try, and these are damages for alleged personal injuries or for personal damages of any nature whatever, and under this definition cannot be included the loss which a person might sustain from not being allowed to cultivate his land as a "khoodkast" ryot, or from the loss he would sustain from the crops being scanty, occasioned by being deprived of the loss of his usual supply of water. The possessors of "seer" lands might also institute suits of this description. I have further to request the Court's construction of Section 4, Regulation XXVIII. of 1814, with respect to claims for damages of the nature above stated when instituted by paupers.

To the Judge of Zillah Juanpoor, dated 5th December, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 25th ultimo.

2. In reply, I am directed to inform you, that suits brought by khoodkast ryots for damages sustained in consequence of ejectment, and claims for damages arising from being deprived of water for the purpose of irrigation, cannot be considered as coming within the prohibition contained in Clause 2, Section 5, Regulation V. 1831, which applies only to suits for damages of a personal nature and not to those for damage done to property; such suits are therefore cognizable by moonsiffs. With regard however to the first description of suits, I am directed to refer you to the circular order of the 15th November, 1833, which declares such claims cognizable by the collector under Regulation VIII. 1831.

3. In like manner the provisions of Section 4, Regulation XXVIII. 1814, do not apply to suits of the nature described by you, the prohibition contained in them extending only to suits for personal damages.

The Presidency Court, on the 26th December, 1834, *concurred in this construction.*

December 5th, 1834.

From the Officiating Commissioner of Circuit, 11th Division, to the Register of the Presidency Court of Nizamut Adawlut, dated 22d November, 1834.

No. 920.

Distance or residence in another district forms no ground for the rejection of the security of a person tendered by a prisoner under orders to give security for good conduct.

Under the order of the Nizamut Adawlut, dated the 28th February, 1834, mitigating the security to be given by certain dacoits now lying in the jail of zillah Sarun, one of them by name Dabee Sing, son of Motee Sing, has got Prem Patuck Britdar, inhabitant of mouzah Nigeree Bulla Rai, pergunnah Maissy, to become his security in the prescribed amount of twenty-five (25) rupees, and the magistrate has reported the same to me.

2. It is obvious that an inhabitant of a village in the pergunnah of Maissy, zillah Sarun, can exercise no control or supervision over the conduct of this Dabee Sing, by profession a dacoit and resident of the Lucknow territories. If the security is merely intended as a form, upon being made acquainted with the same, I shall lose not a moment in instructing the magistrate to release the prisoner; if it is however intended that the security should be of any practical use, I submit to the Court that the present security is utterly insufficient.

To the Officiating Commissioner of Circuit, 11th Division, dated 5th December, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 22d ultimo, and in reply to communicate to you their opinion, that the security of Prem Patuck tendered by Dabee Sing cannot be rejected merely for the reasons stated by you.

December 5th, 1834.

To the Officiating Judge of Zillah Chittagong, dated 12th December, 1834.

No. 921.
1793.
Reg. XLV.
1832.
Reg. VII. Sec. 16.
* See also Construction No. 897.

I am directed by the Court to acknowledge the receipt of your letter of the 25th ultimo, No. 34, and in reply to refer you to construction No. 349,* of the printed construction book, and to inform you that the Court are of opinion that the shikmy and other talooks alluded to by you should be sold in execution of decrees in the same manner as putnee talooks.

The Western Court, on the 23d January, 1835, concurred in this construction.

December 12th, 1834.

No. 922.
1814.
Reg. XXVIII.
Sec. 11, Cl. 3.

The Judge of Zillah Etawah, referring to Clause 3, Section 11 of Regulation XXVIII. of 1814, requested to be informed whether, in the event of a pauper and his sureties both absconding, the property of the latter can be sold in satisfaction of the costs and expenses awarded against the former in the decree.

The Court of Sudder Dewanny Adawlut for the Western Provinces held, that in the present state of the law the sureties for paupers are liable only to the penalty of imprisonment for six months prescribed by Clause 3, Section 11, Regulation XXVIII. 1814, in the event of the principals not appearing, and that the amount of costs due from the principal cannot be levied on the goods of the surety.

The Presidency Court, on the 26th January, 1835, concurred in this construction.

December 19th, 1834.

To the Commissioner of the 1st Division, dated 19th December, 1834.

No. 923.
1834.
Reg. II. Sec. 2, Cl. 1.

I am directed by the Court to acknowledge the receipt of your letter of the 9th instant, with its enclosure, regarding a construction of Clause 1, Section 2, Regulation II. of 1834.

2. In reply, I am directed to inform you that as burkendazes, chowkedars, &c., found guilty of neglect of duty, were not formerly liable to stripes in addition to imprisonment, the provisions of Regulation II. of 1834, in prohibiting the infliction of stripes, do not authorize an addition to the period of imprisonment to which they were liable previous to the issue of that enactment; the order passed by you in the case in question was therefore correct.

The Presidency Court, on the 16th January, 1835, concurred in this construction.

December 19th, 1834.

From the Joint Magistrate of Maldah to the Register of the Presidency Court of Sudder Nizamut Adawlut, dated 12th July, 1834.

No. 924.
1819.
Reg. VII. Sec. 5.

I have the honor to submit for the consideration and orders of the Court, that a petition was presented to me by Mr. Alexander, an indigo planter in this jurisdiction, praying that I would take steps to apprehend a mohurrir of his, who had absconded and taken service in the zillah of Mymensing. I accordingly begged the magistrate of that district to take him into custody, conceiving that I was authorized to make this requisition

by the tenor of Regulation VII. of 1819, but he informs me in reply that the Regulation I quote has only reference to domestic servants and workmen, and that a servant of the description referred to cannot be apprehended.

2. I have therefore to solicit the Court's construction as to the legality of apprehending an absconded mohurrir under Regulation VII. of 1819.

To the Joint Magistrate of Maldah, dated 10th October, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 12th July last, requesting their opinion as to the legality of apprehending an absconded mohurrir under Regulation VII. of 1819.

2. Before answering your question the Court wish to know whether the mohurrir alluded to was a domestic servant or not, and accordingly request that you will report the nature of his service and the engagement under which it was performed.

From the Joint Magistrate of Maldah to the Register of the Presidency Court of Sudder Nizamut Adawlut, dated 11th December, 1834.

I have the honor to acknowledge the receipt of your letter No. 1942, under date the 10th of October, and in reply to state, for the information of the Court, that the person (Cossinath Chowdry) alluded to in my letter of the 12th of July was a gomashtah superintending one of Mr. Alexander's out-factories. The man cannot, I apprehend, be considered as a domestic servant. I beg to submit to the Court that Section 5 of Regulation VII. of 1819, is quite applicable to the case of this man, who, it will be perceived by the accompanying copy of his security bond, agrees to make over to his employer all money and accounts in his posssession before quitting his situation. The inconvenience caused by a person of this description absconding is much greater than that occasioned by the unexpected disappearance of a domestic servant, and I humbly conceive that a gomashtah is to all intents a workman, though not employed as an artisan, or tiller of the soil.

To the Joint Magistrate of Maldah, dated 26th December, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 11th instant, reporting in reply to mine of the 10th October last, the nature of the service of the gomashtah alluded to in your's of the 12th July last, and the engagement under which it was performed.

2. As the gomashtah in question superintends an out-factory, he cannot, as you admit, be considered as a domestic servant, and the Court cannot concur with you that he is a workman. They are therefore of opinion, that the magistrate of Mymensingh was right in refusing to apprehend him.*

The Western Court, on the 23d January, 1835, *concurred in this construction.*

December 26th, 1834.

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* On the 2d January, 1835, the Court held, that the provisions of Sec. 20, Reg. VII. 1799, are equally inapplicable to the gomashtahs and mohurrirs of indigo planters.

Abstract of a Letter from the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny and Nizamut Adawlut, dated 9th January, 1835.

No. 925.

In case of fraudulently filing a petition in the civil court, the judge cannot commit for trial, but should refer to the magistrate.

The Court ruled that in the case of a defendant charged with presenting or filing a petition in the civil court with the fraudulent intent of obtaining money already paid to him, the judge is not competent to commit the accused for trial, but that after completing the investigation as far as may be in his power, he should transmit the papers to the magistrate, stating his opinion on the case and leaving the magistrate to commit or not as may appear to him advisable.

The Presidency Court, on the 27th March, 1835, *concurred in this construction.*

January 9th, 1835.

From the Commissioner of Circuit, 5th Division, to the Register of the Nizamut Adawlut, Western Provinces, dated 9th January, 1835.

No. 926.

1809. Reg. V. 1822 Reg. IX.

Having doubts as to the extent of jurisdiction possessed by the magistrate of Bareilly in a case now before his court, under the following circumstances, I have the honor to solicit the opinion of the Court of Sudder Nizamut Adawlut upon it. The reference from the magistrate's office and my reply thereto I also submit.

2. It appears that Khooraj, a cultivator, formerly a subject of the independant jagheer of Rampoor, but of which character he has been divested in consequence of three years continued residence in the village of Arrowh, district of Bareilly, was, on the 28th November last, forcibly carried off, while employed in his field, by five persons, inhabitants of a neighbouring village named Bulkerrah, situated in the foreign jagheer of Rampoor, to which village they took him, and that in the afternoon of the same day, seven persons, inhabitants of Arrowh and Bholapoor villages, in the British provinces, proceeded to Bulkerrah for the purpose of obtaining his release ; that while there, a dispute arose which terminated in an affray, in which two of the British subjects were killed and two severely wounded, and one of the Rampoor men slightly so.

3. It does not appear that the seven persons who went to Bulkerrah from the two villages in the British provinces carried with them any offensive weapons, or were the aggressors in the present case.

4. All the persons concerned were apprehended, and with the assistance of the aumils of the jagheer brought in to Bareilly for trial before the magistrate.

5. Had the case been the violent seizure and carrying away of a subject of the British state by certain subjects of a foreign territory, the jurisdiction of the magistrate of Bareilly could not I suppose be questioned; but the fact of the subsequent proceeding at Bulkerrah, a village in the independant state of Rampoor, gives another character to the original offence, and appears materially to affect the question of jurisdiction. I would beg therefore to be informed, what course the magistrate ought to take in the present case, and whether in the Court's judgment the parties should be made over for trial to the Rampoor authorities, accompanied with the record and investigation of the case as far as these have been proceeded into.

From the Magistrate of Bareilly to the Commissioner of the 5th Division, dated 3d January, 1835.

In continuation of my roobukaree of the 5th ultimo, reporting the case of affray, &c. which occurred between certain residents of Rampoor and some villages of Arrowh and Bholapoor belonging to Shairgurhi, in which two of the men on this side were killed and two severely wounded (one man only of the Rampoor party being wounded), I have the honor to forward copy of my proceedings of this day's date, detailing, as far as they have yet been ascertained, the particulars of the case, with a view of eliciting your opinion on two points connected with the further measures to be adopted.

From the Commissioner of Circuit of the 5th Division to the Magistrate of Zillah Bareilly, dated 6th January, 1835.

I have the honor to acknowledge the receipt of your letter of the 3d instant, with the foujdarry papers which accompanied it relating to the affray which took place in the village of Bholapoor in the jagheer of Rampoor, in which two British subjects were killed and two others severely wounded.

2. The fact of the principal offenders in the present case being the subjects of an independant state, of the crime having been committed in a foreign territory, of the circumstances which led to its commission originating in a British province, and of the apprehension of the prisoners in a village of the jagheer, occasions doubts in my mind as to the extent of the jurisdiction which you possess in the case in question. I propose accordingly to make a reference on the points you have submitted for my opinion to the Court of Nizamut Adawlut, and will acquaint you with their decision when I receive it.

To the Commissioner of Circuit, 5th Division, dated 16th January, 1835.

I am directed by the Court to acknowledge the receipt of your letter of the 9th instant, with its enclosures, regarding a point of jurisdiction of the magistrate's court in a case of affray.

2. In reply, I am directed to inform you that the foreigners who have entered British territories, and there seized and carried away forcibly a British subject, are evidently liable to be tried by the magistrate of the zillah in which the offence was committed. With regard to the persons concerned in the affray which afterwards occurred beyond the frontier in an independant state, such portion of them as may come within any of the descriptions of persons laid down in Regulation IX. 1822, and the enactments therein referred to, are also liable to be tried by the British court of justice, should the Government, on a reference under Regulation V. 1809, think proper to direct such a measure: the foreigners however who were engaged in that act, and do not come within any of the descriptions abovementioned, are liable only to be tried by the laws of the state in which the offence was committed.

The Presidency Court, on the 31st January, 1835, *concurred in this construction.*

January 16th, 1835.

To the Judge of Zillah Mynpooree, dated 16th January, 1835.

No. 927.
1803.
Reg. III Sec. 16, Cl. 7.
1799.
Reg. V. Sec. 7.
* Corresponding with Section 7, Regulation V. 1799.

I am directed by the Court to acknowledge the receipt of your letter of the 22d ultimo, regarding the manner in which unclaimed property sent in to the magistrate by the police officers should be disposed of.

2. In reply, I am directed to state that the Court concur with you in the opinion that the provisions of Clause 7, Section 16, Regulation III. 1803,* apply only to the property of persons dying intestate when no heirs are forthcoming; it appears to the Court more advisable that property sent in by the police should, agreeably to the general practice, be disposed of by the magistrate than that the time of the judge should be unnecessarily taken up in performing such duty.

The Presidency Court, on the 6th February, 1835, *concurred in this construction.*

January 16*th*, 1835.

To the Additional Judge of Zillah Dacca, dated 16th January, 1835.

No. 928.
1825.
Reg. VII. Sec. 5, Cl. I.

I am directed to acknowledge the receipt of your letter of the 29th ultimo, No. 467, and in reply to inform you that it has been ruled that inadequacy of price alone is not a legal ground for annulling an auction sale, and to communicate to you the Court's sanction to review the order passed by you in the case of

Ram Ruttun Chowdry, plaintiff,

versus

Kishen Chunder Doss, defendant.

Revd. H. Shepperd, claimant.

January 16*th*, 1835.

From the Register of the Western Provinces to the Secretary to the Government of Agra, dated 2d January, 1835.

No. 929.
Competency of a magistrate to apprehend the subject of a foreign state, charged with murder or robbery who may take refuge in the British territory.

I am directed by the Court to transmit, for the perusal of the Honorable the Governor of Agra, the annexed copy of a correspondence with the Presidency Court, regarding the authority of the magistrates to apprehend persons accused of having committed crimes in a foreign territory.

2. The Presidency Court, it will be observed, are of opinion that all persons charged with murder and robbery, or with any crime amounting to felony, (it is presumed, under the English law,) committed in a foreign territory, may be apprehended by the magistrates. It seems, on the contrary, to the Court that those officers cannot be considered to have regular cognizance of any crimes committed beyond the British boundary; unless in so far as persons of the description mentioned in Regulation V. 1809, Section 2, Regulation VIII. 1813, Section 6, Regulation I. 1822, and Section 2, Regulation IX. 1822, are concerned in them, such persons being subjected to their authority by the special provisions of those Regulations; and that the apprehension of other persons charged

with committing a crime beyond the boundary cannot take place under the existing laws, unless the Government for state reasons think proper to direct such a measure. The Court observe that among European states this subject has been considered as of a purely political nature, and such offenders are not apprehended unless under the terms of some special article in a treaty requiring their apprehension, and by special order from the Supreme Government on the representation of the foreign state in which the crime has been committed. The Court are not aware what treaties may exist on this subject with the states adjoining British India, but they are of opinion that the same general rule must be applicable in either instance.

From the Secretary to Government of Agra to the Register of the Nizamut Adawlut, Western Provinces, dated 20th January, 1835.

I am directed to acknowledge the receipt of a letter from you, dated the 2d instant, No. 14, with its enclosures, and in reply to desire that you will inform the Court, that the Honorable the Governor concurs in opinion with the Nizamut Adawlut at Calcutta, viz. that a magistrate is competent to apprehend the subject of a foreign state, charged with murder or robbery, who may take refuge in the British territory.

January 20th, 1835.

To the Judge of Zillah Midnapore, dated 23d January, 1835.

No. 930.
1831.
Reg. VIII. Sec. 8.

I am directed by the Court to acknowledge the receipt of your letter of the 3d instant, and in reply to inform you that in suits instituted under Section 8, Regulation VIII. 1831, the full fees of the pleaders must be deposited, the pleadings must be filed, and all the forms enjoined for the conduct of regular suits must be observed. The only exemption contemplated by the Section in question is the relinquishment, on the part of Government, of three-fourths of the stamp duty levied in lieu of the institution fee, with a view of inducing parties to institute regular instead of summary suits.

The Western Court, on the 27th February, 1835, *concurred in this construction.*

January 23d, 1835.

To the Commissioner of Circuit for the 17th Division, dated 31st January, 1835.

No. 931.
1797.
Reg. XIV.

I am directed by the Court to acknowledge the receipt of your letter of the 17th instant, forwarding a petition from Cossinath Mitter, mokhtar of the individuals robbed in the case of Government *versus* Ram Lochun Mozemdar and others, convicted by you of burglary and theft and breach of trust at the second sessions of 1834 for N. E. Rungpoor, praying for an order to sell certain property of Bungo Chunder mohurrir, one of the convicted prisoners, and to appropriate the proceeds to repay the losses occasioned by the prisoner and his associates.

In reply, I am directed to observe that the provisions of Regulation XIV. 1797 (the spirit of which is still applicable to N. E. Rungpoor) prohibit the criminal courts from

awarding compensation or damages to individuals in any criminal prosecution, except a reimbursement of costs actually incurred, and that the party in question must be referred to a civil action.

January 31*st*, 1835.

Extract of a letter from the Officiating Judge of 24-*Pergunnahs to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated* 21*st January*, 1835.

No. 932.
1812.
Reg. XVI.

Para. 1. In the execution of *exparte* decrees of the Court of Requests under Regulation XVI. 1812, I beg the construction of the Sudder Dewanny Adawlut whether it is incumbent on me or not to issue the notice prescribed by Clause 8, Section 15, Regulation XXVI. 1814. In the foregoing Regulation it is laid down that the judge of 24-Pergunnahs proceed to execute the judgment in the mode prescribed by the existing Regulations for executing *his own decrees.*

2. Another point is whether, both parties being Europeans, I can do more than back any process that may issue from the Court of Requests; that is, if the plaintiff, a European British subject, applies in the usual form for execution against another individual, also a European British subject, can I proceed in the case?

To the Officiating Judge of 24-*Pergunnahs, dated* 6*th February*, 1835.

I am directed by the Court to acknowledge the receipt of your letter of the 21st ultimo, and in reply to inform you that in executing decrees of the Court of Requests under Regulation XVI. of 1812, you should proceed in all respects in the same manner as you would in executing a decree of your own court, and to refer you to the Circular Order of the 25th January, 1833, No. 79, of volume II. new edition, from which you will perceive that the fact of both parties being Europeans, does not in any way affect your cognizance of the matter.

February 6*th*, 1835.

From the Officiating Judge of Zillah 24-*Pergunnahs to the Register of the Court of Sudder Dewanny Adawlut, dated* 21*st January*, 1835.

No. 933.
1825.
Reg. VII.
Sec. 2, Cl. 2.

A practice has prevailed in this zillah, of executing sales of malguzaree houses, gardens, and orchards through the collector: in other zillahs I disposed of that kind of property through the moonsiffs. The wording of the Regulation itself is doubtful. In Clause 2, Section 2, Regulation VII. 1825, the connecting conjunction is used; and in Clause 3 of the same Section the disjunctive: in the 3d Section "or" is again used, but the preamble has "and." I think from the whole tenor of the Regulation that it was intended to sell houses with the parcels of grounds on which they are situated, although such grounds paid rent, as well as gardens and orchards so circumstanced, by means of the nazir or moonsiff; and for the facility of execution of decrees such a mode is highly

desirable to prevent litigation. I beg the orders of the Sudder Dewanny Adawlut on the subject. Ryots' houses, which are included in their tenure and jumma, do come within Section 4 of this Regulation; a muhlool is disposed of in this district through the collector.

To the Officiating Judge of Zillah 24-Pergunnahs, dated 20th February, 1835.

I am directed to acknowledge the receipt of your letter of the 21st ultimo, and in reply to inform you that the Court, having considered the wording of the preamble, and of the second Clause of Section 2, Regulation VII. 1825, in connection with that of the third Clause of Section 2, and of the first Clause of Section 3, are of opinion that houses, gardens, orchards, and small portions of land exempt from public assessment, are to be sold in the same manner as personal property by the civil courts; but that larger portions of land exempt from payment of revenue, and all land paying revenue to Government, however small, not being orchards or gardens, must be sold through the revenue authorities.

The Western Court, on the 20th March, 1835, *concurred in this construction.*

February 20th, 1835.

To the Judge of Zillah Jessore, dated 20th February, 1835.

No. 934.
1830.
Reg. V. Sec. 5.

In reply to your letter of the 7th instant, I am directed by the Court to communicate to you their opinion that a ryot cannot claim a settlement of his account under Section 5, Regulation V. 1830, till "the expiration of the period of his contract," and that if the ryot asserts that the planter is indebted to him for indigo plant, and refuses to pay him what he demands, the ryot must seek redress by a regular suit.

The Western Court, on the 13th March, 1835, *concurred in this construction.*

February 20th, 1835.

To the Judge of Zillah Tirhoot, dated 20th February, 1835.

No. 935.
On the subject of the distribution of sums of money in deposit in Court, when the amounts may be insufficient to meet the entire demands.

I am directed by the Court to acknowledge the receipt of your letter of the 17th ultimo, requesting to be informed whether priority of application for attachment of property in execution of a decree, gives a decree-holder a right to have his decree satisfied in preference to other claimants.

2. In reply, I am directed to forward for your information the accompanying copy of a letter from the register of the Court of Sudder Dewanny Adawlut, Western Provinces, dated the 31st July last and of this Court's reply of the 22d August.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 31st July, 1834.

As it appears that much diversity of opinion and practice prevails with regard to the rules for distributing in liquidation of claims under various decrees of court, sums of

money which may be in deposit and are inadequate to meet the whole demand, the Court direct me to request that you will bring the subject to the notice of the judges of the Presidency Court.

2. The Court understand the present practice, under the sanction of the Presidency Court, to be as follows: the mere priority of date gives no preference to a decree, but that all decrees under which process of attachment has been issued, provided they are dated previous to the distribution of the deposit, entitle the holders to share in proportion to the amount of their claim; with the exception of cases in which a bonâ fide mortgage of the deposit in favor of a particular claim may exist. The Court do not think it necessary to enter into a discussion as to the propriety of the practice, but they are of opinion that some rule on this head should find a place in the civil regulations now under preparation by Mr. Millett, to ensure uniformity of practice, especially among the native judicial officers, who will look to that enactment, when prepared, as their sole guide and manual. The Court have been led to mention this subject in consequence of a reference which has been made to them; from this communication it would appear that the above rule of practice is by no means generally known even among the European functionaries.

To the Register of the Court of Sudder Dewanny Adawlut, Western Provinces, dated 22d August, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 31st ultimo, on the subject of the diversity of opinion and practice which prevails with regard to the rules for distributing, in liquidation of claims under various decrees of court, sums of money which may be in deposit, and are inadequate to meet the whole demand.

2. In reply, I am directed to observe that the practice, as generally followed, appears to be as stated by you, and that your letter will, as suggested by the Western Court, be laid before Mr. Millett, with a view to the insertion of some provisions to meet the difficulty, in the regulation he is now preparing.

February 22d, 1835.

From the Register of the Western Provinces to the Register of the Presidency Court, dated 6th March, 1835.

No. 936.

1793.
Reg. XVI. Sec. 3.

I am directed to request that you will submit, for the opinion of the judges of the Calcutta Court, the following point of law which has arisen in this Court.

2. Under the provisions of Section 3, Regulation XVI. 1793, a judge is empowered to refer to a single arbitrator any suit for money or personal property, the amount or value of which may not exceed 200 rupees; suits exceeding that amount cannot be referred by the judge to a single arbitrator. A doubt has arisen whether this restriction applies to summary suits for arrears of rent or merely to regular suits. The Court are of

opinion that under the terms of the Regulation, which are general, the restriction must be construed to apply to suits of all descriptions. Before acting upon this construction however they are desirous of learning the opinion of the judges of the Calcutta Court.

3. The Court observe that the above restriction is not intended to apply to suits referred to private arbitration by individuals under Section 3, Regulation VI. 1813.

The Presidency Court, on the 27th March, 1835, *concurred in this construction.*

March 6th, 1835.

From the Officiating Commissioner of Circuit, 15th Division, to the Register of the Presidency Court of Nizamut Adawlut, dated 23d February, 1835.

No. 937.

Circular Order, 10th December, 1830, regarding hauts.

In the year 1827 a dispute occurred as to a haut in zillah Sylhet in which Kasheenath and Ramruttun were parties; and after much contention the case went to the Nizamut Adawlut, and it was ruled by Mr. Courtney Smith that Kasheenath's market should be held on the two days named in the proceeding of the magistrate, which Mr. Smith confirmed of date 25th April of that year, Mr. Ross concurring in May following.

2. The same parties are now again in dispute about the same haut; and although there is a circular of date the 10th December, 1830, by which it would seem that the magistrate cannot interfere in any case, yet I should think that this rule must be a prospective one—otherwise of what value does Mr. Smith's decision and that of his colleague become?—I should be glad however to be favored with the opinion of the Court on the question before passing any final order.

To the Officiating Commissioner of Circuit for the 15th Division, dated 20th March, 1835.

I am directed by the Court to acknowledge the receipt of your predecessor's letter of the 23d ultimo, No. 13, and in reply to inform you that the summary order passed by Mr. C. Smith and Mr. Ross, fixing the days on which the respective hauts of Kasheenath and Ramruttun should be held, must be considered in full force until it be set aside by a decision in a regular civil suit, notwithstanding the circular order of the 10th December, 1830, cited by you, which applies only to new disputes regarding hauts, with which the magistrate should not interfere unless it may be necessary to prevent a breach of the peace.

March 20th, 1835.

Extract from a letter addressed to the Officiating Judge of Zillah Chittagong, dated 20th March, 1835, *in reply to his letter of the 4th March,* 1835.

No. 938.

1793. Reg. V. Sec. 21. Reg. IV. Sec. 10 Circular Order, 5th November, 1812.

Para 2. In reply to your 2d paragraph I am directed to inform you, that in the event of an appellant neglecting for a period of six weeks to do any act required, you are at liberty, if he has appointed a vakeel, to call upon him to shew cause for the neglect,

and strike off the appeal in the event of satisfactory reason not being given; but that if the appellant is not in attendance, either in person or by vakeel, the notice prescribed by the circular order of the 5th November, 1812, must be served upon him requiring him to shew cause why his appeal should not be struck off.

March 20th, 1835.

To the Commissioner of Assam, dated 20th March, 1835.

No. 939.
Slavery in Assam.

I am directed by the Court to acknowledge the receipt of your letter of the 20th January last, requesting to be informed how you should proceed in the case of individuals asserting that they are detained in slavery, although neither born slaves nor purchased.

2. In reply, I am directed to inform you that the Court are of opinion that if the party, alleged to be a slave, complain that he is detained by violence, the enquiry should in the first instance be entered into in the criminal department, and if violence be proved, redress should be afforded to him, and the opposite party referred to a civil action to prove his claim.

The Western Court concurred in this construction.

March 20th, 1835.

To the Register of the Western Provinces, dated 27th March, 1835.

No. 940.
1809.
Reg. VIII. Sec. 9.
1831
Reg. XI.

I am directed by the Court to acknowledge the receipt of your letter of the 23d January last, No. 30, and in reply to observe that it has been determined by the circular order of the 8th April, 1818, prior to the enactment of Regulation XI. of 1831, that the magistrate's order in regard to the appointment and removal of native officers receiving salary not exceeding ten rupees was in every respect final; and to state that the Court concur with the judges of the Agra Court that the rule remains in full effect in regard to all such officers, not being officers of police, who, under Section 8, Regulation XI. 1831, may appeal to the commissioner.

March 27th, 1835.

Extract from a letter, under date the 3d April 1835, *addressed to the Commissioner of the* 1*st Division, in reply to his letter of the* 14*th March of the same year.*

No. 941.
Right of appeal while evading execution of a magistrate's sentence.

I am directed by the Court to acknowledge the receipt of your letter of the 14th ultimo, with its enclosure, requiring to be informed whether you were competent to admit an appeal under the circumstances therein detailed.

2. The objections to the admission of the appeal urged by the magistrate is, that appellant had evaded the execution of the sentence passed on him by the magistrate; the Court observe however that as the appellate authority is competent to direct the suspension of the magistrate's sentence, should such a measure appear advisable, pending the proceedings in the appeal court, there can be no doubt that you were at liberty

to exercise your discretion in admitting the appeal. If the appeal were subject to the restrictions which the magistrate wishes to impose on it, the object of the party in appealing would be often totally defeated: and in the present case the accused must have submitted to the degradation of imprisonment in the criminal jail, before he could have obtained the reversal of the sentence passed on him by the magistrate.

The Presidency Court, on the 24th April, 1835, *concurred in this construction.*

April 3d, 1835.

Proceedings of the Western Court under dates 7th November, 1834, *2d January and 3d April,* 1835, *and of the Calcutta Court under dates 28th November,* 1834, *20th February and 1st May,* 1835.

No. 942.
1805.
Reg. II Secs. 2 & 3.
1795.
Reg. XXII. Sec. 35, Cl. 10.

The following questions were put by the judge of zillah Goruckpore, on the 27th October, 1834:

First.—Does the limitation prescribed in Regulation II. 1805, apply to a claim for a share of an ancestral undivided estate, still held by a descendant of the family, in which estate the plaintiff had no manner of possession, either as a sharer of a specific portion, or as receiving a maintenance therefrom, during a period exceeding twelve years antecedent to the institution of the suit, no good cause (minority and the like) of course being shown to excuse the delay?

Second.—Can a person who still holds, or within twelve years has held, possession of a portion of land in an ancestral undivided estate as maintenance, claim to have the estate divided, and his specific share thereof allotted to him? or can the circumstance of his having been content with a maintenance, and not having received a specific portion for a period exceeding twelve years, bar his claim to a separate possession of his own share whenever he thinks fit to demand it.

The Court of Sudder Dewanny Adawlut for the Western Provinces, in concurrence with the opinion of the judges of the Court in Calcutta, ruled in reply to the first question that the limitation prescribed in Regulation II. 1805, was applicable to claims of the nature therein specified.

With reference to the second question, the judges of the Western Court and the majority of those of the Calcutta Court, were of opinion that, according to the spirit of Clause 10, Section 35, Regulation XXII. 1795, the person who had agreed to receive a maintenance, or, as the regulation expresses it, an allowance either in money or in land, from the principal putteedar, in consideration of his right, has no claim to personal possession or management of any part of the estate.

April 3d, 1835.

Extract of a letter from the Secretary to the Government of Bengal to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 7th April, 1835.

No. 943.
1822.
Reg. VI. Sec. 3, Cl 2.

I am directed by the Honorable the Governor of Bengal to acknowledge the receipt of your letter dated the 6th ultimo, with its enclosures, relative to the construction of

Clause 2d, Section 3, Regulation VI. of 1822, and to inform you, in reply, that His Honor concurs in opinion with Mr. Braddon and the judges of the Sudder Court at Allahabad.

2. The whole tenor of Regulation VI. of 1822, as far as it relates to the farming of wards' estates, is, the Governor observes, purely declaratory; and it was avowedly enacted to remove doubts on that score, which the legislature in no wise admits to have been well founded. Clause 2d, Section 3, when taken in its natural connection with the second period of the preceding clause, must be held to include all the parties whose farms were retrospectively declared to be to " all intents and purposes legal and valid."

Mr. Braddon's Minute.

Regulation VI. of 1822 was enacted to remove all doubts of the legality of a system, which has prevailed for a period of many years. Clause 1 of Section 3 declares all antecedent farms, made under the authority of the Court of Wards, legal and valid. Clause 2 of that Section renders individuals holding such tenures subject to the same rules and regulations as are applicable to other persons holding farms under the collectors of the land revenue, and although this clause is not so clearly worded as it might have been, I am of opinion that it was intended to have a retrospective as well as prospective operation; in fact, had it been otherwise it would have been tantamount to declaring any sale that had already taken place liable to be annulled, upon the complaint of the defaulter whose property might have been sold by the collector for the recovery of the balance due from him.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 6th February, 1835.

I am directed by the Court to acknowledge the receipt of your letter of the 23d ultimo, enclosing minutes of the judges of the Calcutta Court, regarding a construction of Regulation VI. 1822.

2. In reply, I am directed to state that the Court concur in the view of the enactment taken by Mr. Braddon. Although the farm was taken previous to the passing of the Regulation, it was rendered legal and valid by Clause 1, Section 3; and by Clause 2, of the same Section, the farmer became liable to the rules applicable to other persons holding farms from the collectors, and among the rest to have his estates sold for arrears of rent. The sale, it is observed, took place after the regulation had been passed.

Extract of a letter from the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 10th April, 1835.

No. 944.
1831.
Reg. IX. Sec. 2, Cl. 2—4.

I am directed by the Court to transmit, for the perusal of the judges of the Calcutta Court, the annexed copy of a minute* of Mr. Ewer, one of the judges of this Court, containing his opinion regarding a point arising out of the provisions of Regulation IX. 1831.

* The view taken in the minute having been over-ruled, it has not been considered necessary to print that document.

2. The other judges of the Court are of opinion that no final decision of the Court can be passed against a respondent until he has been summoned in the usual course.

The Presidency Court, on the 1st May, 1835, concurred in this construction.

April 10th, 1835.

To the Judge of Zillah Mynpoorie, dated 24th April, 1835.

No. 945.
Circular Order, 24th Jan. 1834, No. 106.

I am directed by the Court to acknowledge the receipt of your letter of the 6th February last, regarding the circular order of the 24th January 1834.

2. In reply, I am directed to inform you that you appear to have rightly understood the circular order; no stamp duty would be leviable in pauper cases instituted in the judge's court and afterwards referred to moonsiffs for decision.

The Presidency Court, on the 29th May, 1835, concurred in this construction.

April 24th, 1835.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 24th April, 1835.

No. 946.
1831
Reg VIII.

I am directed by the Court to send, for the perusal of the judges of the Calcutta Court, the annexed copies of a letter from the Board of Revenue under date 3d instant, and its enclosure.

2. With reference to the spirit of the provisions of Regulation VIII. 1831, the Court are of opinion that it was the intention of the legislature to render suits of the nature described by the collector of Banda cognizable by the revenue authorities; and this course appears the more advisable mode of proceeding from the nature of the points which would come under investigation before the officer entrusted with the duty of deciding them. Previously to replying to the Board of Revenue, the Court are desirous of learning the opinion of the Calcutta Court on the point in question.

From the Secretary of the Sudder Board of Revenue to the Register of the Western Provinces, dated 3d April, 1835.

I am directed by the Board of Revenue to request that you will lay before the Court the accompanying letter from the collector of Banda, submitting a question regarding jurisdiction in summary suits, on which the Board beg to be favored with the Court's opinion.

From the Collector of Zillah Banda to the Secretary to the Sudder Board of Revenue, Allahabad, dated 25th March, 1835.

I request you will obtain for me the opinion of the Sudder Board of Revenue on the following question.

2. Are summary suits instituted by malgoozars, against putwaries and other native agents employed by them in the management of their estates, under Section 37,

Regulation XXVIII. of 1803, cognizable by the civil courts; or is the jurisdiction in such cases transferred by Regulation VIII. of 1831, to the revenue authorities?

The Presidency Court, on the 22d May, 1835, concurred in this construction.

From the Judge of Zillah Juanpore to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 18th April, 1835.

No. 947.
1831.
Reg. V. Sec. 22.
1832.
Reg. VII. Sec. 7.

By Section 22, Regulation V. of 1831, principal sudder ameens are authorized to execute their own decrees "under the general rules prescribed for the execution of decrees passed by the zillah and city judges." Under this authority the principal sudder ameen always issued orders for the confinement of defendants in the execution of decrees, without requiring any sanction from the judge. Moonsiffs by the above Regulation, Section 11, were prohibited from executing their decrees without first receiving the sanction of the judge. This mode appears to have been considered objectionable, and, by Section 7, Regulation VII. of 1832, the section above quoted was repealed, and permission was granted to the moonsiffs to execute their own decrees without reference to the judge, provided that no defendant be confined without the sanction of the judge.

2. It is quite clear to me that the intention in framing this regulation was to give an increased authority to the moonsiffs and sudder ameens by Section 22, Regulation V. of 1831. Yet the proviso in Section 7, Regulation VII. of 1832, is so inaccurately worded as to have occasioned an alteration in the power granted to the principal sudder ameen, contrary, I think, to the intention of the legislature. The proviso declares that "the rule in question regards all the officers above named," by which I understand all sudder ameens and moonsiffs; and had it not been for the Persian translation, I should have acted on this interpretation. The translator, instead of adhering strictly to the words used in the proviso "all the officers," has introduced the word principal sudder ameen, which does not appear in the English copy; and on this account the present rule of requiring the principal sudder ameen to transmit the defendants has been adopted.

3. Regarding the rule to be contrary to the intent of the regulation, I have to request the Court's opinion on the subject.

To the Judge of Zillah Juanpore, dated 1st May, 1835.

I am directed by the Court to acknowledge the receipt of your letter of the 18th ultimo.

2. In reply, I am directed to inform you that in the opinion of the Court the proviso contained in Section 7, Regulation VII. 1832, was intended to apply to principal sudder ameens and moonsiffs, and that consequently the former are not competent to confine a defendant without the sanction of the judge.

The Presidency Court, on the 22d May, 1835, concurred in this construction.

May 1st, 1835.

From the Officiating Judge of Dacca to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 22d April, 1835.

No. 948.
1800.
Reg. I. Sec. 4.

I beg to be informed whether in the opinion of the Court a security bond taken under Section 4, Regulation I. of 1800, on the appointment of a person as guardian, can be given up to the surety, on the resignation of the guardian at a period prior to the minor's coming of age.

2. The regulation only requires hazirzamin: I should therefore think the bond ought to be given up; but in a case now before me the deed has been drawn out and signed for hazir and malzamin. However, if that is contrary to the regulation it should nevertheless be given up.

To the Officiating Judge of Dacca, dated 1st May, 1835.

I am directed by the Court to acknowledge the receipt of your letter of the 22d ultimo, No. 133, and in reply to inform you that the bond in the case therein alluded to, should be retained in the custody of the court until the lapse of twelve years from the resignation of the trust, or from the date of the minor's attaining his majority, unless the minor on coming of age should consent to its being restored to the parties concerned.

May 1st, 1835.

No. 949.
1814.
Reg. XXVIII. Sec. 16, Cl. 1.

Held by the Calcutta Court, in concurrence with the Western Court, on a reference from the officiating judge of 24-Pergunnahs, under date the 16th April last, that a principal sudder ameen is not authorized to receive an answer to a plaint from a defendant *in formâ pauperis*, without the sanction of the judge, it being a principle that the judge only can determine the question of pauperism.

The Western Court, on the 5th June, 1835, *concurred in this construction.—Letter to the Officiating Judge of* 24-*Pergunnahs, issued* 19*th idem.*

May 1st, 1835.

From the Judge of Zillah Cuttack to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 20th April, 1835.

No. 950.
1831.
Reg. V. Sec. 5.

I request you will be pleased to obtain for me the orders of the Court of Sudder Dewanny Adawlut on the following points connected with Regulation V. of 1831:

1st. If a person lays claim to a piece of land, which both parties allow to be exempt from the payment of Government revenue, and on which a house is situated, and the purchase money in the deed of sale includes the price of the land and building; can such a suit, being for the possession of rent free land, be tried by a moonsiff under the provisions of Section 5 of the Regulation?

2d. If suits brought by lakhirajdars against occupants, for the rent due to them for their lakhiraj lands, are cognizable by moonsiffs.

3d. If vakalutnamehs in regular suits pending before moonsiffs, and applications presented to them for the execution of decrees, are to be written on stampt or may they be received on unstampt paper?

Held by the Calcutta Court, in concurrence with the Western Court, that suits of the nature described in the first question are not cognizable by moonsiffs.

The word "property" in Clause 3, Section 5, Regulation V. 1831, means the proprietary right in, not the rent of, land exempt from the payment of revenue. Suits therefore for the rent of lakhiraj land are cognizable by moonsiffs, where that point alone is in question.

Vakalutnamehs in moonsiffs' courts, and applications to them for the execution of decrees, may be received on unstampt paper.

The Western Court, on the 10th July, 1835, concurred in this construction.—Letter to the Judge of Cuttack, issued 24th idem.

May 1st, 1835.

From the Judge of Zillah Juanpore to the Register of the Western Provinces, dated 25th April, 1835.

No. 951.
1831.
Reg. VIII. Sec. 15.

I request that you will be pleased to ascertain for me the opinion of the Court, regarding suits which may be referred for investigation under Section 15, Regulation VIII. of 1831. In the event of their being transferred to the subordinate tribunals, are they to be entered and tried as regular suits in the same manner as suits rejected by the collectors under Section 9, or should they be regarded as summary suits and entered under the miscellaneous head? In the suits referred, it will of course be necessary, when the principal point in litigation on which the plaintiffs objected to pay revenue has been disposed of by the regular suits, to enquire into the amount actually due, which, in cases before the moonsiffs, should be regarded as the decision of a regular suit by that officer.

To the Judge of Zillah Juanpore, dated 8th May, 1835.

I am directed by the Court to acknowledge the receipt of your letter of the 25th ultimo.

2. In reply, I am directed to inform you that suits transferred to the subordinate judicial tribunals under the provisions of Section 15, Regulation VIII. 1831, must be entered and tried as regular civil suits.

The Presidency Court, on the 22d May, 1835, concurred in this construction.

May 8th, 1835.

From the Register of the Western Provinces to the Register of the Presidency Court, dated 15th May, 1835.

No. 952.

Held that in a criminal trial in which differing opinions have been recorded, the sentence should issue agreeably to the opinion

In a criminal case now before the Court, in which the opinions of all the judges have been recorded, a difficulty has arisen regarding the issue of sentence. The case includes six prisoners, and the sentences recorded are as follows:

Mr. Ewer convicts and sentences to imprisonment for life at Allipore, Nos. 1, 2, 3, 4 and 6, and No. 5 to imprisonment for life at Cawnpore.

of the majority as regards each prisoner: and that where the difference relates merely to the amount of punishment, the most lenient sentence should be adopted.

Mr. Turnbull, Nos. 1 and 5, to imprisonment for life at Cawnpore, and Nos. 2, 3, 4 and 6 to improsonment for 14 years at Cawnpore.

Mr. Colvin acquits the whole.

Mr. Lambert sentences Nos. 1, 2 and 5 to imprisonment for life, and Nos. 3 and 6 for 14 years at Cawnpore; acquits No. 4.

Mr. Dick acquits the whole.

Nos. 1, 2, 3, 5 and 6 have therefore been convicted by three judges and acquitted by two; the convicting judges differing with regard to the amount of punishment awarded against Nos. 2, 3 and 6: the prisoner No. 4 is convicted by two judges and acquitted by three. The Court request to be informed what has been the practice of the Calcutta Court in issuing sentence under such circumstances. Messrs. Ewer, Colvin and Lambert are of opinion that the sentence should issue agreeably to the opinions of the majority as regards each prisoner; and that where the difference relates merely to the amount of punishment, the most lenient should be adopted unless there is a majority in favour of the more severe punishment.

To the Register of the Sudder Dewanny and Nizamut Adawlut, Western Provinces, dated 3d July, 1835.

I am directed by the Court to acknowledge the receipt of your letter of the 15th May last, No. 23.

2. In reply, I am directed to state that the only case at all similar to the criminal one therein submitted which can be found, is that of Government *versus* Moossummat Umbeeka and Nizam Shah, (see page 154 of volume IV. of Nizamut Reports,) in which the opinions of the judges of this Court were as follows:

Mr. Walpole would have sentenced Umbeeka, No. 1, to death, and Nizam Shah, No. 2, to perpetual imprisonment.

Mr. Rattray—both prisoners to death.

Mr. Shakespear—both to imprisonment for life.

Mr. Ross—both to death.

3. As the voices in regard to Nizam Shah were equal, the trial was referred, under Section 9, Regulation IX. 1831, to the Court at Allahabad, and Mr. Sealy one of the judges of that Court, concurred in a sentence of imprisonment for life against Nizam Shah, and stated that had his opinion regarding Moossummat Umbeeka been asked, he would have sentenced her to death. A capital sentence was issued against Moossummat Umbeeka under the signatures of Mr. Ross, Mr. Rattray and Mr. Walpole, and one of imprisonment for life under the signatures of Mr. Shakespear and Mr. Walpole, Mr. Sealy's name being entered as concurrent in the heading of the sentence body sheet of the latter.

4. Under Section 9, Regulation IX. 1831, the Western Court would be competent either to refer the trial before them to this Court, in the same manner as the case of Nizam Shah was referred to them, for a concurrent majority, or to re-consider their opinions. In the event of its not being deemed necessary to make the

reference, this Court concur in the opinion expressed by Messrs. Ewer, Colvin and Lambert—" that the sentence should issue agreeably to the opinions of the majority as " regards each prisoner; and that where the difference relates merely to the amount of " punishment, the most lenient sentence should be adopted."

To the Judge of Zillah Cuttack, dated 22d May, 1835.

No. 953.

Moonsiffs not liable to deduction from salary when absent with permission, on any established holiday.

In continuation of my letter of the 3d April, No. 1018, I am directed by the Court to inform you that moonsiffs are not liable to a deduction from their salaries when absent from their stations with the permission of the judge on any of the established native holidays.

The Western Court, on the 8th May, 1835, *concurred in this construction.*

May 22d, 1835.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 29th May, 1835.

No. 954.

1831.
Reg. IX. Sec. 3.

I am directed by the Court to transmit for the perusal of the judges of the Calcutta Court the annexed copy of a minute of one of the judges of this Court.

2. With reference to the point of law therein set forth, the majority of the Court are of opinion that under the provisions of Section 3, Regulation IX. 1831, they are not competent to interfere with the order of the commissioner and magistrate, the case being of a miscellaneous nature and consequently not within their cognizance.

3. Before passing any final order, the Court are desirous of learning whether the Calcutta Court concur in this construction of the Regulation.

Mr. Colvin's Minute.

A magistrate, on the report of a thanadar that an affray is to be apprehended between the zemindar and the moostajeers of Ghatumpore, causes them to execute a moochulka to keep the peace under a penalty of 200 rupees, and an affray taking place some time after between their respective dependants, without any proof being adduced against them individually either of being present or of encouraging or causing it, he exacts the amount of the moochulka from them. The commissioner confirms the order and the zemindar appeals to this Court. Can his appeal be heard under Section 3, Regulation IX. 1831, or must the case be considered a miscellaneous one with which we cannot interfere?

To the Register of the Western Provinces, dated 26th June, 1835.

I am directed by the Court to acknowledge the receipt of your letter of the 29th May last, No. 31, and its enclosures, and in reply to communicate to you their concurrence in the opinion of the majority of the judges of the Court of Nizamut Adawlut for the Agra Presidency, that the case therein stated should be considered as a miscellaneous one, to which consequently the provisions of Section 3, Regulation IX. 1831 apply, limiting any notice of them by the superior Court to a representation to Government in those instances that may require it.

From the Judge of Tirhoot to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 20th March, 1835.

No. 955.
1832
Reg. III.

As a difference of opinion regarding the construction of Regulation III. 1832, has arisen, I shall feel obliged by your obtaining for me, in order finally to settle the point, the opinion of the Court, whether that regulation prohibits the transfer for money of slaves altogether, or only the mercantile traffic of them, and carrying them about the country for sale.

2. In Behar domestic slavery has always existed, and still does exist to a great degree, and slaves are constantly transferred from one portion of a family to another on a division, and also sold for money, and decrees have always been passed on such sales; but one of the principal sudder ameens considers that Regulation III. of 1832, annuls all sales since 1811, and that the present sale of them is illegal every where.

3. It appears to me, that the Regulation was only meant to prevent the importation and open traffic in slaves, and therefore will not bear the above construction, although I shall be very glad to hear that it does. There is no regulation prohibiting slavery, and it exists I believe in most parts of our provinces. They are generally bought in years of famine by the wealthy, and their progeny for every generation thenceforward are also slaves. There is no severity in fact in it, for they are generally the favored servants in the family, but still they are slaves, and have not the power of freeing themselves even if they wish it.

4. If the construction given be correct, numbers in this district might release themselves, if so inclined, as many transfers must have occurred since 1811, and I think the point should be decided for the guidance of the courts.

5. As slavery is abolished elsewhere, some regulation might safely be passed on the subject in this country for the prevention of it hereafter. A man may be allowed to let himself out as a slave for his life, (which is sometimes done here,) but he has no right to entail slavery on his posterity; and I do not foresee any danger or difficulty in forbidding hereafter every kind of transfer (except voluntary) among those now slaves, and declaring all children free-born after a fixed date.

To the Judge of Zillah Tirhoot, dated 29th May, 1835.

In continuation of my letter of the 3d April, No. 1022, I am directed by the Court to inform you that Regulation III. of 1832, does not prohibit the transfer of slaves for money; it merely prohibits the removal of them for the purpose of traffic from one territory, British and foreign, to any other territory dependant on this presidency: consequently those slaves only are entitled, under its provisions, to their liberty, who have been so removed subsequently to the enactment of Regulation X. of 1811.

The Western Court, on the 15*th June,* 1835, *concurred in this construction.*

May 29*th,* 1835.

From the Officiating Judge of Meerut to the Register of the Sudder Dewanny Adawlut for the Western Provinces, dated 4th June, 1835.

No. 956.
1793.
Reg. III Sec. 8.
1803.
Reg. II. Sec. 5.
* Munguth Rae, plff.
versus
Peerbuksh, deft.

I have the honor to submit, for the consideration and orders of the Sudder Dewanny Adawlut, the following papers in the case noted in the margin:*

Persian proceeding of this court, dated 26th May, 1835.

Decree of the moonsiff of Kuthere, dated 30th April, 1834.

Decree of the judge of Alligurh, dated 28th November, 1834.

Decision of her Highness the Begum Sumroe, dated 29th April, 1835.

Petition of Munguth Rae, plaintiff, praying for review of judgment.

2. In this case the moonsiff's order was reversed by the judge of Alligurh on the ground of the defendant being an inhabitant of the illaca of her Highness the Begum Sumroe, out of the jurisdiction of Rubboopoora; but it appears that the defendant, having real property in the jurisdiction of the moonsiff's court of Rubboopoora, is amenable to it; the sanction of the Court is therefore requested to the reversal of the order passed by the judge of Alligurh, in order that the case may be re-heard in the civil court of Meerut, to which the pergunnahs of Rubboopoora have been transferred.

To the Officiating Judge of Zillah Meerut, dated 12th June, 1835.

I am directed by the Court to acknowledge the receipt of your letter of the 4th instant, with its enclosures.

2. In reply, I am directed to inform you that the circumstances mentioned by you do not form a sufficient ground for review of the former judge's order. It appears from your letter, that the defendant had real property in the jurisdiction of the moonsiff; this would no doubt render him amenable to it in cases connected with that property; such however is not stated to be the case in the suit to which your communication refers, in which it appears that the parties are both inhabitants of a foreign territory, and that the cause of action also arose in a foreign territory: the case therefore does not come within the limits of jurisdiction laid down in Section 5, Regulation II. 1803.

The Presidency Court, on the 10th July, 1835, *concurred in this construction.*

June 12th, 1835.

From the Officiating Judge of Zillah Meerut to the Register of the Sudder Dewanny Adawlut for the Western Provinces, dated 30th May, 1835.

No. 957.
1829.
Reg. X Schedule B, Article 8.

Bhugwunt Rae and Thakoordas, plaintiffs,
versus
Rugunath Sing, defendant.
Claim for redemption of a mortgaged dwelling house valued at 1050 rupees.

The case noted in the margin is a suit which was instituted before the principal sudder ameen for the redemption of a dwelling house mortgaged to the defendant for 498 rupees, and valued by the plaintiffs at 1050 rupees, but which, subsequently to the completion of the pleadings, on proof of the stated value or selling price of the aforesaid dwelling house being upwards of 5000 rupees, was returned by the principal sudder ameen as beyond his

competency to adjudge. I request the opinion of the Court as to whether in a suit for redemption of mortgage, the institution fee should be computed upon the amount advanced by the mortgager, or the full value of the property mortgaged, there being in the present instance, a difference of 4,500 rupees between the two, and this description of suit not coming exactly under any of the heads of directions for the valuation of claims, specified in Schedule B, Clause 3, Regulation X. of 1829.

To the Officiating Judge of Zillah Meerut, dated 17th June, 1835.

I am directed by the Court to acknowledge the receipt of your letter of the 30th ultimo.

2. In reply, I am directed to inform you that in suits brought by a mortgager to regain possession of property mortgaged, the amount of stamp should be calculated on the value of the property, due regard being had to the rules laid down in the Regulation for estimating that value, and not on the sum for which the property was mortgaged. This appears distinctly to be the intent of Article 8, Schedule B. Regulation X. 1829, under which the stamp is regulated by the value of the thing claimed.

The Presidency Court, on the 7th August, 1835, *concurred in this construction.*

June 17th, 1835.

From the Officiating Judge of Zillah Bundlecund to the Register of the Sudder Dewanny Adawlut for the Western Provinces, dated 6th June, 1835.

No. 958.

Responsibility of persons taking charge of property under attachment.

I am desirous of obtaining the opinion of the Court as to the legality of a practice which I understand prevailed for many years in this court, but which is unauthorized by any enactment or circular order that I am at present aware of.

2. In attaching property in execution of a decree, it is the constant usage to make over the articles to the charge of some individual resident in the village where the property is situated—the chaprassee, by whom the attachment is made, taking an acknowledgment to that effect from the person in whose charge the property is thus left.

3. In the event of the property not being forthcoming at the time fixed for its sale, it seems to be understood that the amanutdar (as he is termed,) is liable to be imprisoned until he produces the property or makes good its value. An application of this nature was made to me a few days since by the principal sudder ameen; but as the practice was new to me, I requested that officer to quote his authority for the proceeding. In reply, he referred to Sections 10 and 18, Regulation XXVIII. of 1803, and to the constant practice of the court as authorized by my predecessors.

4. It does not appear to be that either of the Sections referred to by the principal sudder ameen can bear the interpretation put upon them by him. It is apparently intended by Section 10, that the distrainer is at liberty to leave the goods on the premises in charge of any person whom he may employ for that purpose. In the event of any person removing the property thus left under attachment, he would, I admit, be amenable to the penalties prescribed by Section 18, but it was, I imagine, never

contemplated by the legislature that a distrainer should be at liberty to leave the property in charge of any person whom he or the chaprassee might choose to indicate, who might be, and usually is, unconnected with the distrainer and the case in court, who is to receive no remuneration for the duty thus imposed on him, and who is moreover subjected to a weighty responsibility whether he will or no.

5. Guided by these considerations I declined to pass the order for the incarceration of the amanutdars. But it is represented to me by the sudder ameen that, as there is a great quantity of attached property, in cases which have been pending for years past, in a similar predicament, he apprehends that the persons in whose charge it is may, in consequence of the order passed in this particular case, consider themselves relieved from all responsibility, and either cause all the property to be conveyed away by the owners, or embezzle it themselves.

6. It appears to me from Section 13, Regulation XXVIII. of 1803, that the distrainer is the person who should take charge of the property, and if such a practice were to obtain, I think it likely that distrainers would be more cautious in availing themselves of the powers vested in them by the Regulations. So long as they are enabled to shift the responsibility and expense of guarding the property from themselves to others, it is obvious that they will be disposed to attach property without discrimination, and be less interested in bringing it to a speedy sale.

To the Officiating Judge of Zillah Banda, dated 19th June, 1835.

I am directed by the Court to acknowledge the receipt of your letter of the 6th instant.

2. In reply, I am directed to inform you that no person can be compelled against his will to take charge of property distrained or attached in the manner described in your communication; if however any one should take charge of the property voluntarily, he will of course become responsible for the faithful discharge of his engagement and liable to prosecution before the civil court by a regular suit for damages which may have arisen from his failing to do so; no summary proceedings however can be instituted against him.

3. Generally the person at whose instance the property is distrained or attached must be considered answerable for the safe custody of the property during the period of distraint or attachment.

The Presidency Court, on the 17th July, 1835, *concurred in this construction.*

June 19th, 1835.

To the Session Judge of Zillah Dacca, dated 19th June, 1835.

No. 959.

Power of a session judge to fine, unrestricted, except in certain instances.

I am directed by the Court to acknowledge the receipt of your letter of the 1st instant, No. 176: and, in reply to the question contained in the 2d paragraph, to inform

you that the power of a session judge to fine is considered by the Court to be unrestricted as to amount, except when it is defined by any specific regulation (as in the case of Dhurna by Regulation VII. of 1820.)

June 19*th*, 1835.

Extract of a letter from the Judge of the City of Moorshedabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, under date the 4th June, 1835.

No. 960.

A civil judge is not required to authenticate an English power of attorney.

Para. 1. I wish you to do me the favour of ascertaining from the judges, whether a civil judge is at liberty to authenticate an English power of attorney sent by a lawyer of the Supreme Court, to be executed by a native resident of the judge's district, and with a view to constituting a native of Calcutta his attorney, in some matter pending or to be so before the Supreme Court.

To the Judge of City Moorshedabad, dated 19*th June*, 1835.

I am directed to acknowledge the receipt of your letter of the 4th instant, requesting to be informed whether a civil judge is at liberty to authenticate an English power of attorney, and in reply to inform you that no regulation positively requires a judge to attest such documents; and that if it is likely that the attestation of it will entail the necessity of attendance on the Supreme Court to verify your signature, and thus cause interruption to the discharge of your regular duty, they are of opinion that you should decline doing so.

June 19*th*, 1835.

From the Register of the Western Provinces to the Register of the Sudder Dewanny Adawlut, Calcutta, dated 26*th June*, 1835.

No. 961.

Rule regarding the filing of exhibits with petitions of appeal presented to the Sudder Dewanny Adawlut.

It appears to have been the practice of the vakeels of this Court lately, in filing their petitions of appeal, to file with them not only the copy of the decree appealed against and their vakalutnameh, but also copies of exhibits and other evidence amounting often to a considerable number of papers.

2. The Court are of opinion that no papers should accompany the petition of appeal except the copy of the decree (and the vakalutnameh,) and that if the appellant be desirous of filing others they should be given in with a separate petition on the usual stamp. Before adopting this rule however, they are desirous of learning the practice of the Calcutta Court on this point.

To the Register of the Sudder Dewanny Adawlut for the Agra Presidency, dated 7*th August*, 1835.

I am directed by the Court to acknowledge the receipt of your letter of the 26th June last, No. 83.

2. In reply, I am directed to observe that it has been the practice of this Court to allow the appellant to file, with his petition of appeal, the mokhtearnameh under which

the vakalutnameh may be executed, and the security bonds for costs or staying or enforcing execution, as well as the vakalutnameh and copy of the decree appealed against; and that all other documents are given in with a separate petition on the usual stamp.

3. In applications for special appeals no exhibit fee is required with the documents filed (according to a general roobukaree dated the 13th January, 1830, copy of which is annexed,) until the special appeal be admitted, when the fee is leived on such documents as are put on record in the proceedings.

To the Officiating Judge of Furruckabad, dated 26th June, 1835.

No. 962.
1812.
Reg. V. Sec. 14.

I am directed by the Court to acknowledge the receipt of your letter of the 13th instant.

2. In reply, I am directed to state that the prohibition contained in the regulation against the sale of implements of agriculture relates merely to sales for arrears of rent or revenue; the moonsiff therefore was competent to sell such property in execution of a decree against which no such prohibition exists.

The Presidency Court, on the 31st July, 1835, *concurred in this construction.*

June 26th, 1835.

From the Officiating Judge of Zillah 24-Pergunnahs to the Register of the Presidency Court of Sudder Dewanny Adawlut, under date the 13th June, 1835.

Mr. Joseph Donovan versus Revd. Free Paul Gradoly.

No. 963.
1806.
Reg. II. Sec. 4.

With reference to an order of the late officiating judge of this district relative to staying proceedings, until the receipt of further orders from the Court of Sudder Dewanny, expected upon an intended appeal of the defendant in the case noted in the margin, and to the non-receipt of instructions from the superior court; I have the honor to submit the accompanying Persian proceedings, requesting directions for my guidance, and submitting my opinion on the construction of Section 4, Regulation II. of 1806, which has not been hitherto adverted to in the case.

The section already quoted appears, from the wording of it ("if satisfied," "he may," &c.) to leave the demand of security entirely to the discretion of the judge presiding in the court in which the cause is pending, and to preclude the right of appeal from his order; and, from the circumstance of that right being specially provided for in cases falling under Section 11, of the same regulation, it may be inferred that it was the intention of the framers of the regulation to restrict it to the latter section.

Held by the Calcutta court, under date the 13th June, 1835, that the order of the late judge, Mr. Moore, refusing to take security from the defendant in the case of Mr. Donovan versus the Reverend Fre Paul Gradoly, was opened to appeal to this court.

The Western Court, on the 31st July, 1835, *concurred in this construction—Letter to the Officiating Judge of 24-Pergunnahs, issued 18th September,* 1835.

June 26th, 1835.

Extract of a letter from the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, in reply to the Judge of Furruckabad's letter of 20th June, dated 10th July, 1835.

No. 964.
1814.
Reg. XXIII Sec. 45, Cl. 7.

Para. 2. The Court propose to inform the judge that the limit of imprisonment, laid down in Clause 7, Section 45, Regulation XXIII. 1814, is applicable only to debtors confined under a decree of court. As however it cannot be intended that persons confined by order of the civil court in default of payment of fines should remain in prison for life, the Court are of opinion that in such cases the judge is competent to use his discretion in releasing the prisoner, due regard being had to the circumstances under which the fine was imposed.

The Presidency Court, on the 31st July, 1835, concurred in this construction.

July 10th, 1835.

From the Officiating Judge of Zillah Bundelkund to the Register of the Western Provinces, dated 7th July, 1835.

No. 965.
1805.
Reg. II. Sec. 3, Cl 4.

I have the honor to refer the following question for the consideration of the Court: "Do the provisions of Clause 4, Section 3, Regulation II. of 1805 apply equally to real and personal property or only to the former; in other words can a suit on a deposit of money or other personal property be entertained after the lapse of twelve years from the cause of action?"

To the Officiating Judge of Zillah Bundelkund, dated 17th July, 1835.

I am directed by the Court to acknowledge the receipt of your letter of the 7th instant.

2. In reply, I am directed to inform you that as the terms of Clause 4, Section 3, Regulation II. 1805 quoted by you are general, including "land and other property," its provisions must be considered applicable as well as to suits on deposits of money or other personal property as to land.

The Presidency Court, on the 7th August, 1835, concurred in this construction.

July 17th, 1835.

To the Judge of Zillah Cuttack.

No. 966.
1814.
Reg. XXIII Secs. 40 and 42.

I am directed by the Court to forward to you the accompanying replies to the queries contained in your letter.

Question 1. One of the subordinate courts having in a decree imposed a fine on a plaintiff, for having instituted a litigious and vexatious suit, instead of damages, as enacted by Section 40, Regulation XXIII. 1814,

Answer 1. Section 40, Regulation XXIII. 1814, does not authorize the imposition of a fine for a litigious or vexatious suit, the decree should therefore be reversed, and the case sent back to the subordinate officer, with

is the amount of fine or damages in such cases to be paid to the defendant or carried to the credit of Government?

Question 2. In case a subordinate court in a decree should adjudge damages against a plaintiff under the provisions of the Section above alluded to, must the circumstances of the case be reported to the judge, as prescribed in Section 42 of the same enactment? or may the court adjudging the damages proceed to realize the same in execution of the decree, leaving the person dissatisfied with the decision to appeal from it in the regular mode?

instructions to proceed in the manner laid down in the Section cited. Fines are leviable only on account of Government. If damages are awarded, they belong to the party declared by the decree to be entitled to them.

Answer 2. In such case the damages form part of the decree, and unless the party dissatisfied with it appeal, the decree will be executed, without reference to the judge, in the same manner as other decrees of court.

The Western Court, on the 28*th August*, 1835, *concurred in this construction.—Letter to Judge of Cuttack, issued* 11*th September*, 1835.

July 17*th*, 1835.

To the Judge of Zillah Jessore, dated 17*th July*, 1835.

No. 967.

Suits got forward either by or against a European British subject in his capacity of manager of an estate, not being personal, to be tried in the Company's courts the same as suits on the part of or against a native.*

I am directed by the Court to acknowledge the receipt of your letter of the 1st instant, requesting to be informed whether suits connected with the realization of rent instituted by the tuhseeldars and ryots of estates under charge of Mr. E. Macnaghten, receiver of the Supreme Court, are cognizable by the moonsiffs.

2. In reply, I am directed to inform you that it has been ruled by Government, (on a reference in consequence of a difference of opinion between this Court and the Sudder Dewanny Adawlut for the Agra Presidency,) that the appointment of a European British subject to the management of a native minor's estate cannot be considered to confer on such native the rights and privileges of a European British subject, which only attach to the manager personally; and that suits brought forward either by or against such European British subject in his capacity of manager, not being personal, should be regarded as suits instituted on the part of or against a native, and ought to be tried, like every other suit in which the natives are parties, in the court by which from its amount it may be cognizable.

July 17*th*, 1835.

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* By Act No. XI. of 1836, European British subjects are made generally amenable to the native courts the same as natives.

From the Judge of Zillah Juanpore to the Register of the Western Provinces, dated 23d July, 1835.

No. 968.

The civil courts competent to issue precepts to collectors directing them to carry their orders into effect within a fixed period.

I request that you will be pleased to obtain for me the opinion of the Court whether there would be any objection to the zillah court issuing precepts to the collectors, directing them to carry their orders into effect within a period fixed by the court, or to assign reasons for the order not being completed at the period prescribed by the court. By having a register of the precepts and period when the return should be made, the court would always be made acquainted with any inattention that might occur, and prevent in many cases the delay in execution of decrees, which otherwise cannot be avoided.

To the Judge of Zillah Juanpore, dated 31st July, 1835.

I am directed by the Court to acknowledge the receipt of your letter No. 158, under date the 23d instant, and in reply to acquaint you that they are not aware of any objection to the measure which you have suggested, of requiring the collector to carry into effect the orders of your court, and to return the precept, issued, therewith, duly executed within a certain period, or to shew good and sufficient cause for the delay.

The Presidency Court, on the 21st August, 1835, concurred in this construction.

July 31st, 1835.

From the Judge of City Moorshedabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, under date the 8th July, 1835.

No. 969.

1793. Reg. III. Sec. 8.
1803. Reg. II. Sec. 5.

I have the honor to request the favor of your obtaining for me the opinion of the judges on the following point.

2. A suit has been instituted in this court, having reference to the farm of sixty-three villages, sixty-one of which are situated in the Beerbhoom zillah, and only two belong to Moorshedabad. It happens however, that although, as regards the foujdarry, the sixty-one villages in question are under the magistrate of Beerbhoom, yet the revenue of the whole of them is paid (under, I presume, a special authority) into the collectorate of Moorshedabad, and it is owing to the latter circumstance that the suit has been admitted into the court of this city.

3. As the propriety of hearing the suit in question here, merely because the revenue of all the villages (which are within the limits of another district) happens to be paid into this treasury, seems questionable, considering the tenor of Regulation III. of 1793, especially of Section 8, I wish to ascertain how, in the judgment of the superior Court, I ought to proceed.

To the Judge of City Moorshedabad, dated 31st July, 1835.

In reply to your letter of the 8th instant I am directed by the Court to inform you that, under the presumption that the greater part of the villages which form the cause of

action of the suit therein alluded to are situated within the jurisdiction of the civil court of Beerbhoom, they deem it proper that the suit should be tried in that court, and request that you will transfer it for that purpose with a copy of this letter to the judge of Beerbhoom.

July 31*st*, 1835.

No. 970.

1829.

Reg. X. Sec. 3, and Schedule A.

I am directed by the Court to forward their reply to the question contained in your's of the 29th of the preceding month.

Question. An account of a party is made up, and the balance struck and stated, according to established usage, at the foot of the sheet in the byekhata or banker's book of account: a third party renders himself responsible for the eventual adjustment of such balance, by affixing his name in the capacity (to all intents and purposes) of security for the debtor's discharge of the creditor's claim. Will the guarantee as above described, of the third party, be vitiated by the fact of the said security, &c. being on unstamped paper?

Answer. To make the security available to the claimant, the leaf in the account book on which it is written must be stamped (as it still may be under Section 14, Regulation X. 1829.) At the same time, in the event of that course not being adopted, it rests with the claimant, in order to derive benefit from the security, to adduce other sufficient evidence of its having been given, independently of the paper exhibiting it, which in its present state cannot be legally received in proof of the fact.

The Western Court, on the 4*th September*, 1835, *concurred in this construction.—Letter to the Judge of Moorshedabad, issued* 18*th September*, 1835.

August 7*th*, 1835.

From the Officiating Session Judge of Zillah Bundlekhund to the Register of the Western Provinces, dated 30*th July*, 1835.

No. 971.

In the event of a prisoner committed for trial on two counts being convicted on only one count by the session judge, and only on the other by the law officers, the session judge is incompetent to pass sentence, but must refer the trial to the Nizamut Adawlut.

I have to request you will obtain for me the opinion of the Sudder Nizamut Adawlut on the following point:

2. Supposing a prisoner to be committed on two counts, on both of which if convicted, the maximum of punishment which the session judge is authorized to inflict, is the same; as for instance "affray" and "culpable homicide," or "theft" and "knowingly receiving stolen property," and there being a difference of opinion between the session judge and the law officer, the one deeming the prisoner convicted on the first count and the latter on the second, or vice versa; is it necessary for the judge to refer the case to the Sudder Nizamut Adawlut, or may he proceed to pass sentence agreeably to the Regulations?

To the Officiating Session Judge of Bundlekhund, dated 7th August, 1835.

I am directed to acknowledge the receipt of your letter under date the 30th ultimo, and in reply to communicate to you the opinion of the Court that, in either of the cases put by you, a session judge would not be competent to pass sentence, but must necessarily refer the trial for the orders of the Nizamut Adawlut.

The Presidency Court, on the 28th August, 1835, *concurred in this construction.*

August 7th, 1835.

From the Officiating Session Judge of Zillah Goruckpore to the Register of the Western Provinces, dated 28th July, 1835.

No. 972.
1828.
Reg. VIII. Sec. 3.
1834.
Reg. II. Sec. 3.

I beg you will do me the favor to submit, for the opinion of the Court of Nizamut Adawlut, the following question of construction:

2. Are the powers vested in magistrates by Section 3, Regulation VIII. of 1828, to sentence offenders in cases of affray, to imprisonment *with labor*, (subject of course to the provisions of Section 3, Regulation II. of 1834,) strictly limited to one year, or are those functionaries competent to adjudge the penalty of labor for a further period of one year, in default of payment of the fine which that enactment authorizes to be imposed on the offending party in addition to imprisonment?

To the Officiating Session Judge of Zillah Goruckpore, dated 7th August, 1835.

I am directed by the Court to acknowledge the receipt of your letter under date the 28th ultimo, and in reply to communicate to you the opinion of the Court that the power vested in a magistrate by Section 3, Regulation VIII. of 1828, of awarding labor to a prisoner convicted of affray unattended with aggravating circumstances, during the original term of imprisonment to which he may be sentenced, must be considered to extend equally to the further period of imprisonment he may be required to undergo in default of paying the fine which, under the provisions of the foregoing enactment, the magistrate may see fit to impose on him; subject, of course, as regards both periods, to the rule laid down in Clause 2, Section 2, Regulation II. of 1834.

The Presidency Court, on the 4th September, 1835, *concurred in this construction.*

August 7th, 1835.

From the Commissioner of Circuit for the 3rd Division to the Register of the Western Provinces, dated 24th July, 1835.

No. 973.
1810.
Reg. IX. Sec. 39.
1825
Reg. IX. Sec. 9.

1. Letter in original from the Session Judge of Zillah Bareilly, dated 21st July enclosing—

I have the honor to submit, for the orders of the Court, the documents noted in the margin.

2. Letters from the officiating joint magistrate of Shahjehanpore, dated 18th July, which covered
3. An original letter addressed to the register of the Nizamut Adawlut, dated 18th July, referring a question for the decision of the Court.

2. The question submitted by the joint magistrate for the opinion of the Court appears to be, whether the taking of "choongee" by zumeendars, within the precincts of whose estates markets are held, is illegal or otherwise.

3. The Regulation alluded to by the joint magistrate, viz. XXXVIII. of 1803, is rescinded by Regulation IX. of 1804, which again is rescinded by Section 2, Regulation IX. of 1810.

4. Sections 3, 37, 38 and 39 of the latter Regulation appear to be the only clauses which bear on the question, which I conclude should be taken into consideration in connection with Section 9 of Regulation IX. of 1835.

5. The missil of the case which has given rise to the reference is with the records of the late fifth division at Bareilly : should the Court deem it requisite to have it before them with a view to apply to Government for a reversal of Mr. Commissioner Campbell's orders of the 24th October, 1834, or otherwise, it can be sent for and submitted. I have not however deemed it proper to defer the reference requested by the joint magistrate on this account.

6. In conclusion I have the honor to request the Court will decide if references of a nature similar to the present should in future be made by the session judge, under the orders of Government of the 16th ultimo, or by the commissioner.

From the Officiating Joint Magistrate of Shahjehanpore to the Register of the Western Provinces, dated 18*th July*, 1835.

I have the honor to request the favor of your submitting the following case for the orders of the Sudder Nizamut Adawlut. Mr. Robinson, on a plaint being filed by Hoolassee Heeraloll, plaintiff, *versus* Usmutoollah Khan, directed the cotwal of Shahjehanpore, in a roobukaree under date 12th August, 1834, to station a police officer in mouzah Mhaow on bazar days, for the purpose of preventing the zumeendar or any other individual from collecting "choongee." The zumeendar appealed the case to the commissioner, who, in a Persian proceeding dated 24th October, 1834, reversed the magistrate's order, remarking that such a custom had obtained among the landholders from time immemorial, and that Regulation XXXVIII. of 1803, as quoted by the plaintiffs to prove the illegality of the practice, was not applicable to the case in point, but referred to unauthorized collections connected with the permit or custom-house. The commissioner, however, made a reserve in favor of parties trading in grain or other merchandize, passing through the above village without exposing the same for sale, whom he considered as entitled to be exempted from this tax.

2. On the 10th February, 1835, twenty-seven bunias and traders again petitioned against this exaction; and, from the state of excitement that prevailed, it was deemed necessary to depute a police man to the village to keep the peace.

3. There cannot exist a doubt, I think, regarding the impolicy and inconvenience of continuing a custom so essentially liable to be abused, and so vexatious to the petty trading classes of the villages; but the late commissioner of Bareilly having viewed the case in a different light and upheld the usage as a legal and acknowledged right of the zumeendars, I trust the Court will excuse my requesting that some explicit orders may be issued on the subject.

To the Commissioner of Circuit for the Third Division, dated 7th August, 1835.

In continuation of my letter to your address under date the 7th ultimo, and in reply to the question submitted in paragraph 2 of your communication of the 24th of the preceding month, regarding the power of a zemindar to levy "choongee" in markets held within the precincts of his estate, I am directed to communicate to you the opinion of the Court that the provisions of Section 39, Regulation IX. of 1810, cited by yourself and the officiating joint magistrate, which is a penal enactment, are not applicable to collections of the above nature, which appear to be sanctioned by established custom, and would, therefore, rather fall within the rule contained in Section 9, Regulation IX. of 1825, provided of course that no oppression or act of violence be committed such as to render the case cognizable by the magistrate as a misdemeanor under the general regulations in force.

The Presidency Court, on the 25th September, 1835, *concurred in this construction.*

August 7th, 1835.

No. 974.
1806.
Reg. XVII. Sec. 7.

The Calcutta Court held on a reference from the judge of Cuttack that if a mortgager or his representative, desirous of redeeming the mortgaged property in the possession of the mortgagee, deposits the sum due to the mortgagee either with or without interest (as the case may be) in court, under the provisions of Section 2, Regulation I. of 1798, and Section 7, Regulation XVII. 1806, the period of the notice to be served on the mortgagee, requiring him to render up possession of the property, need not be a year, but any reasonable period according to the distance of his residence from the sudder station.

August 7th, 1835.

From the Judge of Zillah Mymensingh to the Register of the Presidency Court of Sudder Dewanny Adawlut, under date the 20th July, 1835.

No. 975.

A session judge is competent to try a prisoner committed by his own order in his capacity of civil judge, for any criminal act not being forgery or perjury.

A case is now under investigation before me, in which the sherishtadar of the late moonsiff of Seraujgunge (deceased) is accused of making away with two plaints presented to the moonsiff, and with other acts of assumption of authority and direct interference in suits pending in the moonsiff's court. If the first offence is proved, some notice for the sake of example would be necessary, and I am therefore desirous of knowing whether the offence "abstracting a record of a civil court" is of that criminal character that I

might direct the magistrate to commit the defendant; and again, if committed, should I be competent to take up the trial as session judge, or would it be necessary to send the case to the commissioner?

The Court's late opinion in cases of perjury makes me doubtful on this last point, and to prevent a wrong direction on my part to the magistrate, I am desirous in this stage of the proceedings to be furnished with the superior Court's instructions for my future guidance.

To the Judge of Zillah Mymensingh, dated 7th August, 1835.

In reply to your letter of the 20th ultimo, I am directed to inform you that if, from the *prima facie* evidence before you, you think that there are grounds for bringing the sheristadar of the late moonsiff of Seraujegunge to trial for any criminal act, not being forgery or perjury, or other act for which the civil judges are themselves expressly enjoined to commit for trial, you should make over the case to the magistrate, leaving him to commit the prisoner, or otherwise dispose of the case, as he may think proper. In the event of his committing the prisoner, you are competent to try him as session judge.

August 7th, 1835.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court, dated 7th August, 1835.

No. 976.

A zillah judge confirming the decree of a lower court is not competent to adjudge interest on the sum decreed at a less rate than 1 per cent.

A question having arisen whether a zillah judge, confirming the decree of a lower court, is competent to adjudge interest on the sum decreed at a less rate than 1 per cent. per mensem, I am directed to request you will submit the point for the consideration and opinion of the Calcutta Court.

By Section 35, Regulation IV. of 1803, the Provincial Courts were required to adjudge the full rate of interest in such cases; and referring to the object of the rule, viz. the prevention of litigious appeals, and to the situation in which the zillah courts are placed by the abolition of the Provincial Courts, it appears to the Court that the principle of the rule, the terms of which are imperative, must be considered equally applicable to the zillah judges, and, should the Calcutta Court concur in this opinion, they propose to adopt it as a rule of future practice.

August 7th, 1835.

To the Register of the Western Provinces, dated 18th September, 1835.

I am directed by the Court to acknowledge the receipt of your letter of the 7th ultimo, No. 56, and in reply to inform you that they concur in the construction contained in the 2d paragraph, the principle of which they also extend to principal sudder ameens.

From the Officiating Judge of Zillah Nuddea to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 7th August, 1835.

No. 977.

1810. Reg. XIII. Sec. 11.
1829. Reg. X. Schedule B, Article 10.

I have the honor to request that you will obtain for me the opinion of the Court of Sudder Dewanny Adawlut on the following point, viz. whether the provisions of Section 11,

Regulation XIII. 1810, relative to the refund of the institution fee in cases adjusted by razeenameh, are to be considered as applicable to cases of dustburdaree, in which a plaintiff voluntarily relinquishes the prosecution of his claim.

To the Judge of Nuddea, dated 28th August, 1835.

I am directed by the Court to acknowledge the receipt of your letter of the 7th instant, and in reply to inform you, that the refund of the stamp duty in lieu of the institution fee can only be sanctioned in cases in which a razeenameh has been regularly filed.

August 28th, 1835.

To the Commissioner of Circuit for the 4th Division, dated 11th September, 1835.

No. 978.

The illegitimate son of a European British subject by a native mother can be tried by the local courts on a charge of adultery.

A married woman, the legitimate child of a British father, is not amenable to the local courts on a similar charge preferred against her by her husband.

I am directed by the Court to acknowledge the receipt of your letter under date the 15th ultimo, No. 88, with its enclosures, from the acting magistrate of Allahabad.

2. In reply to the first question submitted by the acting magistrate I am directed to acquaint you, for his information and guidance, that the illegitimate son of a European British subject by a native mother can be tried by the local criminal courts on a charge of adultery.

3. With respect to the second point referred by the acting magistrate, I am directed to communicate to you the opinion of the Court, that under the existing regulations a married woman, the legitimate child of a British father, is not amenable to the local courts on a similar charge preferred against her by her husband.

The Presidency Court, on the 9th October, 1835, *concurred in this construction.*

September 11th, 1835.

To the Judge of Zillah Rajeshahye.

No. 979.

1814.
Reg. XXIII. Sec. 45, Cl. 6.
1831.
Reg. V. Sec. 22.
1832.
Reg. VII. Sec. 7.

The question put by you to the Court appears, on consideration of your letters of the 2d June, and that under acknowledgment, to be as follows:

2. As Clause 6, Section 45, Regulation XXIII. of 1814, (which empowers a judge to admit an appeal from the decision of a moonsiff, notwithstanding the prescribed period of appeal have elapsed, should it appear that such decree was obtained in an irregular manner, or some sufficient grounds be shewn for staying its execution,) has not been especially repealed by Regulations V. of 1831 and VII. of 1832, can the judge now admit the appeal, though the prescribed period have elapsed?

3. The Court observe that the provisions of Clause 6, Section 45, Regulation XXIII. of 1814, were considered necessary to check irregularities, in the decisions of the moonsiffs of the old system, but are inapplicable to those appointed under Regulation V. 1831, who are considered to be persons of superior respectability and qualifications, and have on that ground been vested with higher powers. Their decisions have been placed by the general rules contained in Section 22 of that Regulation and Section 7, Regulation VII. 1832, on the same footing as those of other courts, consequently in the opinion of the

Court no appeal is admissible from them, notwithstanding any irregularity or error, after the lapse of the prescribed period, unless good and sufficient cause be shewn for the delay which may have occurred in excess of that period.

The Western Court, on the 2d October, 1835, *concurred in this construction.—The letter to the Judge issued 23d October,* 1835.

September 11*th,* 1835.

From the Additional Judge of Zillah Ghazeepore to the Register of the Court of Sudder Dewanny Adawlut for the Western Provinces, dated 10*th September,* 1835.

No. 980.

1795.
Reg. XXII. Sec. 35, Cl. 2, 3, 5.

Several cases regarding the claims of putteedars to obtain separate possession of their shares being now before me, I find it necessary to refer the following question for the opinion of the Court. There seems to be a difference of opinion on the subject among former judges, and the regulation does not appear to me very distinct.

2. Under the provisions of Clauses 2 and 3, Section 35, Regulation XXII. 1795, the possession of any one putteedar within twelve years entitles the whole of the sharers to restoration, and by Clause 5 of the same Section it is further enacted that such putteedars shall be entitled to restoration on any one putteedar regaining possession, although they have not held possession within twelve years. The doubt which has arisen is whether, after one putteedar has regained possession, there is any limit whatever in point of time with regard to the other sharers bringing forward their claim. The point may be more plainly stated thus; A obtained a decree of court in 1820 for possession as zemindar, his putteedars B and C are in consequence entitled to possession of their shares; but must these claims be brought forward immediately or at any time before 1832, or is there no limitation whatever?

To the Additional Judge of Zillah Ghazeepore, dated 18*th September,* 1835.

I am directed to acknowledge the receipt of your letter under date the 10th instant, requesting the opinion of the Court as to whether, with reference to the provisions of Clauses 2, 3 and 5, Section 35, Regulation XXII. of 1795, after one putteedar has regained possession of his puttee, there is any limit whatever in point of time with regard to the other sharers bringing forward their claim.

2. In reply, I am directed to communicate to you the opinion of the Court that in cases of the nature of those described in the enactment above cited, the putteedars or "other sharers" alluded to therein must prefer their claims within the period of twelve years from the date on which the proprietory right was adjudged by a decree of court to the zemindar or one or more of their co-parceners, and that in default of so doing their claims would fall under the operation of the general rule of limitations.

September 18*th,* 1835.

To the Register of the Western Provinces, dated 23d October, 1835.

I am directed by the Presidency Court to acknowledge the receipt of your letter of the 18th ultimo, No. 31, enclosing copies of a letter from the additional judge of Ghazeepore under date the 10th ultimo, and of a reply to the same which the Western Court propose to transmit with the concurrence of this Court.

2. In reply, I am directed to state that Mr. Rattray and Mr. Shakespear concur without rèservation in the construction which the Western Court propose to adopt in their answer to the additional judge. The other judges of the Court also concur, provided that for upwards of twelve years after the proprietory right was adjudged to one of the putteedars, the other sharers did not hold any lands pertaining to the estate in lieu of receiving a specific share of the profits.

To the Officiating Judge of Zillah Chittagong, dated 16th September, 1835.

No. 981.
1819.
Reg. II. Sec. 30.

I am directed by the Court to observe that in the cases alluded to by you, there are generally two points at issue—1st, the proprietory right, or right of ownership, and 2ndly, the nature of the tenure under which the lands are held. In all cases, in which the right of ownership is alone the point at issue, (as for instance, when the heirs of a holder of rent-free lands sue their co-parceners for their respective shares,) the case appertains solely to the civil court; on the other hand, if the nature of the tenure as well as the proprietory right is disputed, viz. if a zumeendar claims possession of any land as attached to his estate, and the defendant pleads that he holds possession thereof as rent-free, or *vice versa*, the case must, in the judgment of the Court, be referred to the collector for report.

2. With reference to the 10th paragraph of your letter, I am directed to request, in the event of the collector returning any reference made by you, with an opinion that the case is not one on which he is bound to report, that you will, in the event of your entertaining a different opinion, repeat the order, under the usual precept, requiring a return to be made within a given period. Should the collector still refuse to investigate the case, you will then report the circumstances in English for the information of this Court, in order that such further measures may be adopted as may appear to be necessary and proper.

3. These instructions will of course supersede the mode of proceeding by appeal to the commissioner laid down in the Construction Book, page 224, No. 527.

The Western Court, on the 11th March, 1836, *concurred in this construction.*

September 16th, 1835.

Resolution of the Presidency Court of Sudder Dewanny Adawlut, under date the 16th Oct. 1835.

No. 982.
1814.
Reg. XXVI. Sec. 4,
Cl. 3.

It was resolved in concurrence with the Western Court that when, in a case decided by a single judge, the deciding judge shall have rejected an application for a review of the judgment, his rejection is to all intents and purposes final; unless he himself shall see grounds, on a subsequent application, to admit a review, and that it is not competent to

the Court (the said judge being absent and incapable of hearing a second petition within six months) to authorize a review of the order rejecting the review.

October 16*th*, 1835.

Extract of a Letter from the Commissioner of the 5th Division to the Officiating Register of the Sudder Dewanny Adawlut, Western Provinces, dated 2d October, 1835.

No. 983.
1799.
Reg. V. Secs. 2, 3.
1803.
Reg. III. Sec. 16, Cl. 2, 3.
1806.
Reg. XV. Sec. 6.

I have the honor to request that you will obtain from the Court an opinion on the construction of Section 16, Regulation III. 1803, and Section 6, Regulation XV. 1806.

Question 1*st*.—Is the interference of the civil judge, by Section 16, Regulation III. 1803, and Section 6, Regulation XV. 1806, strictly limited to cases of persons dying intestate or not?

Question 2*nd*.—Though the will of the deceased be not forthcoming, or no will may exist, ought the civil judge to interfere if there be "a claimant," a near relation, or respectable friend on the spot, willing to take charge of and to be responsible for the property?

Question 3*d*.—If in the case last mentioned, the judge be considered bound to take charge of the property, may he not use some discretion, such as feeling and delicacy would naturally suggest, in delaying for a few days the necessary advertisement, thereby to give the friends of the deceased on the spot an opportunity of informing those at a distance of their loss, before the formal announcement is made publicly to the world?

To the Commissioner of Circuit for the 5th Division, dated 16*th October*, 1835.

I am directed by the Court to communicate to you their opinion as follows, on the several points of Section 16, Regulation III. of 1803, and Section 6, Regulation XV. of 1806, mentioned in your letter of the 2d of that month.

2. In reply to your first question I am directed to inform you that the interference of the civil court with respect to the estates of deceased British subjects, is not restricted by the Sections of the Regulations above quoted to the cases of persons dying intestate, but on the contrary Section 6, Regulation XV. of 1806 expressly requires, that on the demise of a British European subject within the limits of the jurisdiction of a zillah or city court, the judge shall take charge of the effects of the deceased, and on a will being discovered shall deliver them over to the person who may obtain probate thereof.

3. In answer to your second question I am directed to observe that in either of the cases which you have supposed, where the will of the deceased is not forthcoming, or where none may be in existence, notwithstanding that there may be a claimant, near relation, or respectable friend on the spot, willing to take charge of and to be responsible for the property, the Regulation before cited renders it obligatory on the civil court to interfere, as in the case described in the preceding paragraph, and to retain charge of the

estate until the registrar of the Supreme Court of Judicature, to whom the circumstance is immediately to be reported, or some other person, shall have obtained letters of administration from that Court, when the property is to be delivered over to the person to whom such letters may have been granted. The terms of the enactment being imperative and express as to the jurisdiction to be exercised by the zillah courts in such cases, the Court observe that no discretion whatever is left to the judge in the matter.

4. With reference to the third point noticed in your letter, the Court direct me to observe that the course to be pursued by the zillah and city judges in matters of this nature is clearly laid down in the Regulations, and they do not consider themselves competent to authorize any deviation therefrom.

The Presidency Court, on the 13th November, 1835, concurred in this construction.

October 16th, 1835.

From the Judge of Zillah Moradabad to the Officiating Register to the Sudder Dewanny Adawlut for the Western Provinces, dated 17th October, 1835.

No. 984.
1821.
Reg. I.

With reference to the accompanying copies of letters from the Secretary to the Government of Agra, I beg to be favored with the orders of the Court respecting the mode in which the trial of the cases alluded to, is to be conducted, whether in the form of judicial trials, or agreeably to the provisions of Regulation I. 1821, as regards the filing of exhibits, applications for the attendance of witnesses, permission to mokhtars, not authorized vakeels of the court, to plead, &c. &c.

2. Also, whether in the investigation of such cases the power devolving on the special commissioner, by Section 5 of the Regulation quoted, of amending or annulling altogether decrees previously passed in the judicial courts is to be exercised.

To the Judge of Zillah Moradabad, dated 30th October, 1835.

I am directed by the Court to acquaint you that in the trial of the cases, which have been made over to you under the orders of Government, from the commissioner of the division, you should be guided by the rules applicable to the investigation and decision of claims of that nature as laid down in Regulation I. of 1821, and the subsequent enactments on the same subject; and that with regard to such suits you must be considered to be vested with precisely the same powers and authority as were possessed and exercised by the officers of the special commission, acting under the provisions of the Regulation above cited, and subsequently, on the abolition of that office, by the commissioners of revenue and circuit, to whom the duties of the commission in question were transferred under the provisions of Clause 1, Section 10, Regulation I. of 1829.

The Presidency Court, on the 20th November, 1835, concurred in this construction.

October 30th, 1835.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Nizamut Adawlut, under date the 30th October, 1835.

No. 985.
1799.
Reg. VIII. Sec. 3.
A Hindoo liable to punishment for aiding and abetting in the suicide of a leper.

I am directed to request you will submit, for the perusal of the Calcutta Court, the accompanying copy of a letter from the officiating session judge of Bundlekhund, under date the 21st instant, referring, for the orders of the Court, his proceedings on the trial noted in the margin.*

* Government *versus* Doorjun & others; charge, culpable homicide in burying alive Shunker, a leper.

2. The object of the present reference is to ascertain the practice of the Calcutta Court in cases of this nature, and their opinion on the question raised by the officiating session judge as to the liability of a Hindoo to punishment for aiding and abetting in the suicide of a leper, the act being declared by the Shaster justifiable under certain circumstances, and having been so held by the Court in their resolution under date the 25th June, 1817.

3. A case more in point, the Court observe, that either of those alluded to by the officiating session judge, and to which he does not appear to have adverted, is to be found at page 127, volume III. of the Nizamut Reports, in which the persons concerned were of the same persuasion as those in the trial under consideration. The Court in that instance convicted the parties of the crime laid to their charge, and although under the peculiar circumstances of the case they did not deem it proper to visit the offence with any severer punishment than the imprisonment they had already undergone, their sentence clearly involved a departure from the principle of the resolution above alluded to, and they see no grounds for questioning the propriety of the conviction in that case, or for their pursuing a different course in the trial now before them, particularly as the practice of Suttee or of burning or burying alive the widows of Hindoos, which the barbarous and unnatural custom herein alluded to was considered to resemble in principle, has been declared by a legislative enactment illegal and punishable by the criminal courts. But as the resolution in question was adopted by the Court at large after a full discussion of the subject, and has never been formally set aside, it seems probable, as in the instance under consideration, that it is still looked upon by the lower courts as the rule of practice in cases of this nature, and that it influences their proceedings accordingly. Under these circumstances it has appeared to the Court that the present reference from Mr. Begbie furnishes a suitable opportunity for a re-consideration of the whole question; and they propose, therefore, with the concurrence of the Calcutta Court, to consider the resolution of the 25th June, 1817, as superseded, and to be guided in future by the rule contained in Section 3, Regulation VIII. of 1799, which is still in force, and which expressly declares that "it "shall not justify any prisoner convicted of wilful homicide, that he or she was desired "by the party slain to put him or her to death."

The Presidency Court, on the 18*th December,* 1835, *concurred in this construction.*

October 30*th,* 1835.

From the Session Judge of Zillah Juanpore to the Officiating Register of the Nizamut Adawlut for the Western Provinces, dated 2d November, 1835.

No. 986.

A session judge is competent to direct the re-apprehension of a person charg d with a criminal offence, who may have been acquitted by the magistrate, and to sentence him to punishment, after hearing his defence.

It is the duty of a session judge to send for any case the order passed in which may appear to him on a revision of the monthly statements, to be of questionable propriety.

I request that you will obtain for me the opinion of the Court of Nizamut Adawlut on the following question :—An appeal is made to me from an order passed by the officiating magistrate of Juanpore in a case of assault, in which it appears from the evidence taken before that officer that the complainant and others were aggressors, and equally engaged with the prisoner punished by the magistrate, but in consequence of his party having received the worst of the assault, the acting magistrate releases the complainant's party. Am I authorized to sentence the complainant and his party to any punishment after their acquittal by the acting magistrate?

2. The monthly reports of criminal trials are now forwarded to the office of the session judges instead of that of the commissioner of circuit. I have therefore to request that you will ascertain from the Court of Nizamut Adawlut whether I may call for any trial without a petition of appeal, and revise the sentence. This power was invested in the commissioner of circuit, and should the session judge be unable to exercise it, I would suggest that the monthly statements be forwarded as heretofore to the commissioner.

To the Session Judge of Zillah Juanpore, dated 6th November, 1835.

I am directed by the Court to acknowledge the receipt of your letter, No. 89, under date the 2d instant.

2. In reply to the question submitted in the 1st paragraph of your letter, I am directed to inform you that, in your capacity of a court of appeal, you are competent to direct the re-apprehension of a person charged with the commission of a criminal offence, who may have been acquitted by the magistrate, and to sentence him to punishment, should such acquittal appear to you to have been improperly made ; but the Court direct me to communicate to you their opinion that this power should be exercised with the utmost caution, and only on strong grounds being shewn for your interference ; and that whenever you may see occasion to reverse the decision of a lower court in a case of this nature, previously to passing sentence of punishment on the accused, you should hear any defence which he may wish to make.

3. With respect to the particular case which has given rise to your present reference, the Court take it for granted that the persons concerned therein, whom you consider to have been improperly acquitted by the magistrate, have been regularly put on their trial.

4. In reply to your second question, the Court direct me to observe that, in all matters connected with the administration of criminal justice, you are vested with precisely the same powers and authority as were possessed and exercised by the commissioners of circuit, prior to the introduction of the provisions of Act VII. of 1835 into the district subject to your control, and that you are therefore not only competent, but that it is your duty to send for any case the order passed in which may appear to you, on a revision of

the magistrate's statements, of questionable propriety, although no appeal may have been preferred to you in the matter.

The Presidency Court, on the 4th December, 1835, *concurred in this construction.*

November 6th, 1835.

To the Deputy Secretary to the Government of Bengal in the Judicial Department, dated 13th November, 1835.

No. 987.

1819.
Reg. II. Sec. 30, Cl. 7.
1829.
Reg. X. Schedule B. Article 8.

* Letter to the Register Sudder Dewanny Adawlut, Western Provinces, dated the 17th July, 1835.
Resolution of the Court, dated 10th July, 1835.
Letter from the Officiating Register Sudder Dewanny Adawlut, Western Provinces, dated 7th August, 1835, No. 37.
Letter to ditto ditto, ditto 4th September, 1835.
Letter from ditto ditto, ditto 25th ditto, No. 43.

I am directed by the Court to transmit to you the accompanying copies of correspondence as per margin,* and to request to be informed whether, in the opinion of Government, the rule contained in Clause 7, Section 30, Regulation II. 1819, which allows a petition of appeal from the decision of a collector to be written on stampt paper of one rupee value, is to be considered as repealed by the provisions of Regulation X. of 1829, which rescinds all the previous Regulations relative to the imposition, levying and collecting of stamp duties.

2. His Honor in Council will observe that the Court doubt whether, with reference to the peculiar nature of the suits affected thereby, the special indulgence granted to appellants under the rule in question can be held to be abrogated by the stamp regulation.

November 13th, 1835.

From the Secretary to the Government of Bengal to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 17th November, 1835.

I am directed to acknowledge the receipt of your letter dated the 13th instant, with its enclosures, and to inform you in reply, that in the judgment of the Honorable the Governor of Bengal, Section 2, Regulation X. of 1829 must be held, as ruled by the Sudder Court at Allahabad, to rescind Clause 7, Section 30, Regulation II. of 1819, in common with all other parts of the existing Regulations relating to the imposition, levying and collecting of stamp duties.

Extract from a Letter addressed, under date the 4th September, to the Register of the Western Provinces, in reply to his Letter of the 7th August, 1835.

Para. 2. I am directed to request information as to whether the principle laid down in the third paragraph of that letter, is considered by the judges of the Allahabad Court to be applicable to the first petition of appeal from the collector's decision under Clause 7, Section 30, Regulation II. of 1819, as well as to the petition of special appeal and to the pleadings, exhibits, &c. in both appeals; as the Court are disposed to doubt

whether, with reference to the peculiar character of such suits, the special indulgence granted to appellants under that rule can be held to be abrogated by the stamp regulation.

From the Register of the Western Provinces to the Register of the Presidency Court, dated 25th September, 1835.

I am directed by the Court to acknowledge the receipt of your letter, No. 2136, under date the 4th instant, regarding the value of stamp duty to be used for petitions of regular and special appeal in suits under Regulation II. of 1819.

2. In reply the Court direct me to acquaint you, for the information of the judges of the Calcutta Court, that they are of opinion the principle of the rule laid down in paragraph 3 of their letter to your address, under date the 15th March, 1833, must be considered equally applicable to the first petition, that is to say, the petition of regular appeal preferred under Clause 7, Section 30, Regulation II. of 1819, from the decision of a collector, as to the petition for a special appeal in cases of that nature, and, in like manner, to the pleadings, exhibits, &c. in both appeals.

3. Section 2, Regulation X. of 1829, the Court observe, rescinds all Regulations and parts of Regulations then existing in regard to the collection of stamps, and as it contains no provision exempting Clause 7, Section 30, Regulation II. of 1819 from its operation, the latter enactment must be held to have been repealed by it equally with all other laws on the same subject; and it having been ruled by the two Courts,* with reference to the provisions of the Regulation first cited, and in consequence of Section 8, Schedule B, Regulation X. of 1829 making no exception in favor of petitions for special appeals in cases of the nature of those under consideration, that full stamp duty is leviable thereupon, the Court consider that, by a parity of reasoning, petitions for a regular appeal in such cases as well as the pleadings, exhibits, &c. connected therewith are also chargeable with the full amount of duty, in the same manner as all other regular suits instituted in the established courts of civil judicature.

* See construction No. 768.

To the Secretary to the Sudder Board of Revenue, Western Provinces, dated 20th November, 1835.

No. 988.
1795.
Reg. XXXIV. Sec. 2.

I am directed by the Court to acknowledge the receipt of your letter, No. 107, under date the 30th ultimo, with its several enclosures, on the subject of the pensions payable from the Benares treasury under the provisions of Section 2, Regulation XXXIV. of 1795.

2. The Board not having been able to obtain for the Court an inspection of the documents called for in Mr. Jackson's letter to your address under date the 6th March last, their construction of the abstract point of law, submitted to them under the orders of Government, must be understood to be given solely with reference to the papers now before them, and on a consideration of the regulations bearing on the question. With this qualification, and reserving to themselves the liberty of exercising their own judgment

with respect to any claims of this nature which may hereafter come judicially before them, and of determining each case strictly according to its merits, they direct me to request you will inform the board that they concur in the opinion expressed in the letter to your address from the secretary to Government in the Revenue Department, under date the 3d February last, that the pensions in question are not transferable by sale, gift, or otherwise, for a longer period than the lives of the original grantees; and that, on failure of heirs of the original grantees, they must be considered to escheat to Government as lapsed or expired grants.

3. In support of this construction the Court observe that by Section 15, Regulation XLII. of 1795, the altumgha, ayma, and mududmaash grants specified therein, are expressly declared to be transferable by sale, gift or other mode of conveyance, and all that is required of persons succeeding to them is to register them within six months after the date of their succession; but Section 2, Regulation XXXIV. of 1795, although passed nearly at the same time, confers no such power of alienation on the holders of the pensions mentioned in that enactment, and a distinction is thus clearly drawn between the two classes of grants, since, though both are hereditary, the former only are declared open to transfer.

4. And this opinion, the Court observe, would further appear to be strengthened by a reference to Regulation II. of 1813, which, as stated in the preamble, was enacted with a view to prevent the Government from being defrauded of its dues by persons receiving pensions, who are not legally entitled to them; and though, as appears from the second paragraph of your letter under acknowledgment, the provisions of that Regulation may not have been acted upon, they are expressly made applicable by the second Section of it to pensions of the nature of those specified in Regulation XXXIV. of 1795, while the grants described in Regulation XLII. of the same year, were subjected to no such revision.

The Presidency Court, on the 18*th December*, 1835, *concurred in this construction.*

November 20*th*, 1835.

No. 989.

The collector cannot without application to the judge direct a moonsiff to sell property in liquidation of arrears of revenue.

The Presidency Court held, on a reference from the judge of Dacca, that a collector is not competent, without application to the judge, to issue a perwanah to a moonsiff to sell personal property and houses attached by his nazir for arrears of public revenue.

The Western Court, on the 26*th December*, 1835, *concurred in this construction.*

November 28*th*, 1835.

From the Judge of Zillah Cuttack to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 13*th November*, 1835.

No. 990.

1814.
Reg. XXIII. Sec. 15, Cl. 4.

I have the honor to forward copy of a proceeding this day received from the moonsiff stationed at Balasore, for the orders of the Court of Sudder Dewanny Adawlut.

2. Clause 4, Section 15, Regulation XXIII. of 1814, parties appointing vakeels in the moonsiffs' courts are directed to settle the amount of the fees with their pleaders, and no deposit is required to be made on this account; but there is no provision made in the enactment for securing a proportion of the fees to a pleader, who may be substituted for another who commenced the pleadings.

3. The pleaders in the moonsiffs' courts realize the fee demandable by them from their clients, previous to acting for them, which mode is attended with much inconvenience. Firstly,—They do not pay so much attention to their clients' interests, as if they had the fees in anticipation; and secondly,—If a pleader is changed while the suit is pending, or if he should die, or be removed, the person appointed to conduct the case in his stead can demand no fee from his client, as whatever was demandable has been paid and received in advance. It appears therefore that some order is required to guard against loss to either clients or pleaders, and I beg to submit the subject therefore for the consideration of the Superior Court.

To the Judge of Zillah Cuttack.

I am directed by the Court to inform you that the Regulations do not require the zillah and city judges to interfere in regard to remuneration of their vakeels by parties in the moonsiffs' courts. They therefore desire that you will refrain from doing so further than to intimate that if a party choose to change his vakeel he is bound to remunerate the individual engaged in the second instance, as well as him who was entertained originally.

The Western Court, on the 2d January, 1836, *concurred in this construction.—The letter to the Judge was issued on the* 15*th January,* 1836.

December 11*th,* 1835.

No. 991.
1793.
Reg. III. Sec. 17.

The following minute having been referred by Mr. Master, officiating judge, for the opinion of his colleagues, the majority of the Presidency Court held that the case therein alluded to was cognizable by the judge of the 24-Pergunnahs.

Minute of Mr. Master, dated 6th November, 1835.

At the request of Mr. N. B. E. Baillie, I beg to refer the following point for the opinion of the judges.

2. Mr. Baillie contends that Section 17, Regulation III. 1793, having never been rescinded, the Dewanny Adawlut of the zillah of the 24-Pergunnahs is strictly prohibited from entertaining any suit whatever against a person who may be an inhabitant of Calcutta at the time the suit may be instituted, or may become a resident within the limits of the town after the suit may be commenced.

3. In the case in which this reference is requested both the plaintiff and defendant are residents of Calcutta, but the cause of action is to recover possession of land situated within the jurisdiction of the 24-Pergunnahs. In admitting and proceeding with the suit, the provisions of Section 7, Regulation IX. 1819, were attended to by the judge of

the zillah; and in my opinion the objection urged by Mr. Baillie is over-ruled by the provisions of that enactment. To remove the doubt however, I beg to solicit the opinion of the other judges.

The minutes of the several judges were referred for the opinion of the judges of the Western Court on the 11th December, 1835. The following is the Western Court's reply:

From the Officiating Register, Western Provinces, to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 8th January, 1836.

I am directed by the Court to acknowledge the receipt of your letter, No. 2926, under date the 11th ultimo, with its enclosed copies of minutes recorded by the judges of the Calcutta Court on a construction of Section 17, Regulation III. of 1793.

2. In reply, I am directed to acquaint you that the Court are unanimously of opinion, with the majority of the judges of the Calcutta Court, that the suit which gave rise to the present reference, was cognizable in the Court of the 24-Pergunnahs.

Exception with respect to the town of Calcutta, Reg. III. 1793 and Reg. II. 1803, Section 12.

The town of Calcutta, which is under the immediate jurisdiction of His Majesty's Supreme Court of Judicature, not being comprised in that of any Zillah or City Court, the above powers do not include the cognizance of any suits for land or other real property situated within the limits of Calcutta; nor *any personal actions* against the fixed inhabitants of that town, which may not be for arrears of revenue, or may be legally considered exclusively cognizable by the Supreme Court.

3. In the support of this opinion the Court direct me to adduce the passage noted in the margin from Harington's Analysis (volume I. page 36,) and to express their entire concurrence in the construction therein given to the term "nor any suit whatever," as used in the Section of the Regulation above cited, viz. that it was intended to apply to personal actions only against the fixed inhabitants of the town of Calcutta, and not to exclude from the cognizance of the zillah court of the 24-Pergunnahs suits, for land or other real property situated within the limits of its jurisdiction, brought against residents of that town. That such was the intention of the legislature would appear from the fact that the real property excepted from the jurisdiction of the court for the 24-Pergunnahs is especially defined to be lands, tenements, &c. situated within the limits of Calcutta, and that consequently suits for such property, when situated in the 24-Pergunnahs beyond the specified boundary, are within the cognizance of that court. The Court further direct me to observe that they understand the provisions of the Section under discussion to be similar in every respect to Section 12, Regulation II. of 1803, quoted by Mr. Harington as a corresponding enactment.

To the Officiating Magistrate of Moorshedabad, dated 18th December, 1835.

No. 992.

1819.
Reg. VII. Sec. 3.

I am directed by the Court to communicate to you the following reply to the question contained in your letter of the 4th September.

Is a magistrate competent, on a complaint preferred under Section 3, Regulation VII. of 1819, by the wife of an Indo-Briton who refuses to support her, to require security from him to maintain

2. The law being a penal one must be construed literally. It does not authorize a requisition of security. The magistrate should

her (the wife alleging that the husband is about to leave the country;) or must the magistrate be content with a simple written agreement of the husband to afford an adequate sum to the wife?

require the husband to enter into an engagement in writing to provide for his wife, and should punish any, and every, subsequent breach of such engagement distinctly complained of and proved, as a misdemeanour, by imprisonment for a period not exceeding one month.

The foregoing construction was given in conformity to the opinions of the Calcutta Court and the Government of Bengal.

18*th December*, 1835.

From the Session Judge of Juanpore to the Register of the Western Provinces, dated 16th December, 1835.

No. 993.
1834.
Reg. II. Sec. 2, Cl. 1.

The acting joint magistrate of Azimgurh having sentenced a prisoner, who had escaped from the roads, to two years' imprisonment and thirty stripes of a rattan with labor in irons, it appears to me that the sentence passed by that officer is contrary to the intent and meaning of Section 6, Regulation II. of 1834. I have therefore to request the opinion of the Court of Nizamut Adawlut.

To the Session Judge of Juanpore, dated 24th December, 1835.

I am directed by the Court to inform you that as that part of Clause 1, Section 5, Regulation XII. of 1818, which vested the magistrates with the power of awarding corporal punishment by stripes in cases of prisoners convicted of effecting their escape from confinement, must be held to have been rescinded by Clause 1, Section 2, Regulation II. of 1834, equally with all other enactments which authorized a sentence of that description; and the only cases excepted from the operation of the rule laid down in that Clause, are those described in Section 6 of the same Regulation, in which the infliction of corporal punishment may be considered absolutely necessary for the purpose of maintaining good order and discipline in the jails; the Court concur with you in opinion that the sentence of stripes passed by the officiating joint magistrate of Azimgurh, in the instance to which you allude, was illegal, and beyond his competency, and he should be required strictly to abstain in future from having recourse to that mode of punishment in cases of a similar nature.

The Presidency Court, on the 22d January, 1836, *concurred in this construction.*

December 24th, 1835.

From the Session Judge of Allighur to the Register of the Western Provinces, dated 13th December, 1835.

No. 994.
1818.
Reg XII. Sec. 3, Cl. 4. Meaning of the term "cattle."

Doubts appearing to exist on the construction I have formed of the term "cattle stealing" mentioned in Clause 4, Section 3, Regulation XII. of 1818, I have deemed it the best to submit the subject for the decision of the Nizamut Adawlut.

2. Believing the Regulation to have been intended for the protection of cultivators, and finding the term in the Persian translation worded گاوان and میشان, I reduced the sentence of a former joint magistrate in a case of stealing a pony from graze.

3. On the other side, it is intended to take the term in its widest occupation, which would not only include tattoos but cows, sheep, goats, &c., a latitude I do not think ever was contemplated, for it never can be supposed that the loss of any of the latter would cause the same injury as that of a bullock or buffalo, which deprives the cultivator of the means of supporting his family.

4. The immediate cause of this reference has been the officiating magistrate asking my opinion relative to an order passed by the acting joint magistrate, sentencing to two years' imprisonment two individuals for stealing two donkies valued at forty rupees.

To the Session Judge of Zillah Allighur, dated 24th December, 1835.

I am directed by the Conrt to communicate to you the opinion of the Court that the term "cattle," as used in Regulation XII. of 1818, must be held to include not only bullocks and buffaloes, but all animals of the description of those alluded to in paragraphs 3 and 4 of your letter of the 13th ultimo.

The Presidency Court, on the 22d January, 1836, *concurred in this construction.*

December 24th, 1835.

No. 995.
1793.
Reg. XLIX.

On a reference from the judge of Hooghly, the Presidency Court held, on the 24th December, 1835, that suits under Regulation XLIX. 1793, cannot be referred to principal sudder ameens, either for trial or for investigation and report. In this construction the Western Court concurred on the 22d January, 1836.*

From the Officiating Judge of Zillah Dacca to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 8th December, 1835.

No. 996.
1822.
Reg. XI. Sec. 28, Cl. 2.

I have the honor of forwarding two original deeds of sale given by the collector for lands sold at his office, and beg to know whether I am bound (the deeds specifying so little or I may say nothing) to send an aumeen, or other officer of the court into the mofussil to try to give the purhaser possession.

2. The deed No. 1 recites that the howala rights in the howala, called Ramakant Sirma, belonging to Ramakaunt Sirma, added to zillah Rajnuggur from chukla Phoolberia, the collections being annexed to zillah Rajnuggur, the sudder jumma being twenty-four rupees, is sold, for a balance of revenue for 1240, for the sum of twenty-nine rupees to the buyer. The name mentioned is the recorded name in the collector's books,

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* Altered by Sec. 8, Act XXV. 1837.

perhaps of a person dead twenty or more years ago, but if he was the last in possession, to what village or part of zillah Rajnuggur is the aumeen to proceed ?

3. The purchaser cannot bring any papers stating the amount of land or ryots' names or any other particulars.

4. The other deed is in the same style, the sudder jumma being ninety-eight rupees one anna : it is sold for one hundred and twenty-seven rupees.

To the Officiating Judge of Zillah Dacca.

I am directed by the Court to inform you that in the cases reported in your letter of the 8th December last, if the information furnished in the deeds of sale be insufficient to enable you to comply with the requisition made to you, to put the purchaser in possession, you should record the points on which it is defective, and your inability to proceed without full and specific information respecting them, sending a copy of your proceedings to the collector for his information, should the requisition have proceeded direct from that officer.

The Western Court, on the 29th January, 1836, *concurred in this construction.—This letter was issued 12th February,* 1836.

January 2d, 1836.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 29th May, 1835.

No. 997.

Jurisdiction of appellate courts in regard to the interests of several defendants affected by a decree, from which however only one of them appeals.

I am directed to request that you will ascertain and communicate to the Court the practice and opinion of the Calcutta Court on the following point.

2. A decree is passed in a zillah court against several individuals; one of them appeals to the Sudder Court ; the rest do not appeal : in deciding this appeal case, is the Sudder Court competent to take up the case as regards the whole of the persons against whom the zillah decree was passed, should it see reason to do so, or must its proceedings be confined to that part of the decree which affects the rights and interests of the individual appealing? The Court rather incline to the latter opinion, but are desirous of learning the existing practice of the Calcutta Court before adopting it.

3. The rule in such cases would of course be equally applicable to all other appeals, such as those tried by the judge or principal sudder ameen.

To the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 2d January, 1836.

I am directed by the Court to acknowledge the receipt of your letter of the 29th May last, No. 57.

2. The Court have delayed their reply in order to ascertain whether any precedents existed on record, of cases in which the Court has taken cognizance of, and decided on, the interests of parties to the original suit who have not joined in the appeal. No such precedent has been found.

3. They are of opinion that the appellate courts ought generally to confine themselves to the decision of the objections to the decree made by the parties who appeal;

but that, where obviously requisite for the ends of justice, the jurisdiction of the appellate court may extend to all the interests affected by the decree.

The Western Court, on the 22d January, 1836, *concurred in this construction.*

January 2d, 1836.

From the Assistant in Charge of the Judge's Office, Zillah Dinagepore, to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 10th December, 1835.

No. 998.

Circular orders, 6th February, 1835.

Rules for defining the duties of assistants in charge of the current duties of the judge's office.

I beg leave to solicit through you the opinion of the Court of Sudder Dewanny, on the following point in the rules for defining the duties of assistants or other officers in charge of the current duties of the offices of civil and session judge, which accompanied your letter of the 6th February, 1835.

2. In the 3d paragraph of these rules it is stated, that "the officer in charge is competent to carry into effect orders passed previously by the judge for the sale of property attached in execution of decrees, or other judicial process, or to stay the sale of such property pending the investigation of objections or claims preferred, but it shall not be competent to the assistant or other officer to hold such investigation or to issue orders for the sale of such property except when it may be of a perishable nature." I beg to be informed, whether this paragraph renders it imperative on the officer in charge to stay the sale of any property, which has previously been ordered by the judge to be sold in every case, in which a petition is given stating objections or preferring claims, or whether he is allowed to refuse to delay the sale without any investigation, but merely on the ground that the objections stated or claims preferred in the petition are insufficient reasons for such delay.

3. I am induced to request information on this point as many decrees of long standing have lately been ordered to be executed by this court, and consequently the petitions of owners of attached property for a delay of the sale are numerous; and as all investigation is forbidden by the rules abovementioned, I am unwilling to refuse the delay requested, and have consequently in all cases postponed the sale till further orders, taking security from the petitioner when it seems advisable.

4. I beg also to be informed whether I am competent to pass orders on summary appeals from the decisions or orders of sudder ameens, moonsiffs, &c. under the provisions of Regulation XXVI. 1814, Section 3, or to pay over sums of money in deposit to parties who have obtained a decree for the same but have not procured an order for the money from the judge.

To the Officer in Charge of the Judge's Office, Zillah Dinagepore.

I am directed by the Court to communicate to you their opinion, that you are competent to suspend the execution of an order passed by the judge for the sale of property, if, in the exercise of a sound discretion on a perusal of the petition objecting to the sale, you consider it right to do so; but that you cannot hold any investigation with a view to ascertain the truth or otherwise of allegations or claims contained therein.

2. With reference to your concluding paragraph I am directed to state that, on a petition of summary appeal being presented, you are not competent to make any enquiry on the merits of the case, but should merely record the date of its presentation, and let it lie over for the next coming judge; and further, that you are not competent to pay any money in deposit unless under an order passed by the judge before you received charge of the office, or unless the payment be directed by an express order of this Court or of any other court in execution of whose decree it may have been deposited.

The Western Court, on the 5th February, 1836, *concurred in this construction.—Issued 19th February,* 1836.

January 8th, 1836.

On the 8th January, 1836, *Mr. Braddon submitted the following Minute for the opinion of his Colleagues.*

No. 999.
1793.
Reg. III. Sec. 16.
1803.
Reg. II. Sec. 10.

A. sued B. for the recovery of a village, which at the time of the settlement B. contrived to get wrongfully included in his own talook as part and parcel thereof. The Court decreed the village to A., directing its disjunction from B.'s estate and its being separately assessed by the collector. But B. having appealed against the decision execution was stayed, and pending the appeal the whole of B.'s talook was sold for balance of revenue, and the purchaser having been put in possession of the village in question along with the other part of the property, B. declined proceeding with the appeal, and it was accordingly dismissed. B. however eventually succeeded in getting the public sale set aside by the courts of judicature, and A. who came forward as a third party in the case claiming the village, was referred to a regular suit against B. I am desirous therefore of obtaining the opinion of my colleagues whether, under the foregoing circumstances, the decree obtained by A. was not final and conclusive against B., and whether on the sale of B.'s estate being annulled it ought not to have been executed, instead of A.'s being referred to a new suit to establish his right to that which had already been adjudged to him by a competent tribunal, and the appeal from which had been dismissed on the default of B. to proceed with it.

Connected with this case I further solicit the opinion of the judges upon another point, namely, A. having in pursuance of the above order brought an action against B. or the recovery of the village, a decree was passed by the sudder ameen in his favor, and on B.'s appealing from it the zillah judge discovered that B. after the institution of A.'s suit, and notwithstanding he was in possession of the village, had also filed a suit against A. to *have himself declared the malik of it.* The question therefore is, whether the zillah judge, merely upon having B.'s petition of appeal before him, and without deciding it, was competent, under the rules contained in Section 16, Regulation III. of 1793, to dismiss B.'s suit without issuing the prescribed notice to A. to appear and answer to it. The words of the Section in question bearing upon the point are as follows—" The zillah and city courts are prohibited *entertaining* any cause which, from the production of

a former decree or the records of the court, shall appear to have been heard and determined by any former judge or any superintendent of a court having competent jurisdiction."

With reference to the first question the Court were of opinion that the decree obtained by A. was final, and ought to have been executed. The question involved in the concluding paragraph was forwarded for the opinion of the Western Court.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 5th February, 1836.

I am directed by the Court to acknowledge the receipt of your letter, No. 46, under date the 8th ultimo, with its enclosed copies of minutes recorded by the judges of the Calcutta Court on a question involving a construction of Section 16, Regulation III. of 1793.

2. The only point on which the Calcutta Court would appear to desire the opinion of this Court is as to what was the proper course of proceeding to be observed by the judge in regard to the disposal of the claim preferred by B., on discovering that a suit had already been instituted by A. in reality for the same cause of action, and which was at that time pending in appeal before him from the decision of the sudder ameen passed in favor of the plaintiff.

3. On this point the Court at large direct me to observe that as the judge had proof before him of the institution of the prior suit by A. which was furnished by the records of his office, they are unanimously of opinion with the majority of the judges of the Calcutta Court, that under the rules laid down in Section 16, Regulation III. of 1793, he was fully competent, on the information before him, to dismiss the suit of B. without issuing any notice to the other party to appear and answer thereto.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 5th February, 1836.

No. 1000.

Execution of process of sale and arrest in jurisdictions other than that in which the decree was passed and is in course of execution.

I am directed by the Court to request you will submit, for the consideration and opinion of the Calcutta Court, the accompanying copies of the correspondence noted in the margin.*

2. The Court propose, with the concurrence of the Calcutta Court, to answer the question submitted by the additional judge of Ghazeepore, in the concluding paragraph of his letter, in the negative. They observe, however, that cases may arise in which it would be proper and necessary for the court called upon to execute the process of another court, either for the arrest of the person against whom it issued, or the sale of property, to suspend execution pending a reference to that court in regard to any objections taken to its order, though the final decision in such cases would still rest with the court issuing the process.

* Copy of a letter from the additional judge of Ghazeepore, dated 4th January, 1836.

Ditto ditto to the judge of Benares, dated 15th January, 1836.

Ditto ditto from ditto ditto, 25th January, 1836.

3. As regards the first of the two cases out of which the present reference arose, the Court observe that as the land, ordered to be sold by the additional judge in satisfaction of a decree of the Sudder Dewanny Adawlut, though attached to the collectorate of Benares, was under the jurisdiction of the civil court of Juanpore, the judge of the former city was not competent to exercise any interference in the matter, but should have referred the parties objecting to the sale of the lands in question either to the judge of Juanpore, or additional judge of Ghazeepore for such notice as their claims might appear to require.

4. With respect to the second case the Court consider that the late judge of Benares exceeded his competency in directing the release of the person arrested therein, under the process of the court of Ghazeepore, without previously obtaining the acquiescence of that court in his so doing : the opposite party, however, does not appear to have preferred any appeal from that order ; nor did the court of Ghazeepore make any remonstrance at the time ; and as on the issue of a second process, in compliance with the requisition of the additional judge of Ghazeepore, the nazir of the Benares court reported that the person ordered to be arrested was not forthcoming, the Court are of opinion that no other course was left to Mr. Gorton to pursue but to forward a copy of his nazir's return for the information of the additional judge.

From the Additional Judge of Zillah Ghazeepore to the Officiating Register of the Western Provinces, dated 4th January, 1836.

* Government and Rajah Oodwunt Narain Sing, Appellants, *versus* Ranee Golaub Koour and Kamtapersaud, &c. Respondents.

In this case,* although I have mentioned the circumstances in a Persian proceeding under this date for the Court's information, I think it proper more particularly to bring them to the Court's notice. In execution of a decree of the Sudder Dewanny Adawlut, a list of property situate in the jurisdiction of the judge of Juanpore and of the collector of Benares having been given in to this court, I requested the judge of Juanpore to have it sold and to remit the proceeds of sale to my court. I have now received a proceeding from the judge of Juanpore, with copy of a proceeding of the collector of Benares, in which the collector states that the judge of Benares has prohibited the sale for the present; of the reason I know nothing and have addressed the judge of Benares on the subject; but I consider the judge of Benares incompetent to forbid the execution of my order, especially without assigning a reason for so doing, and that it was incumbent on that officer to bring his objections to my notice, when I should of course have been ready to give every attention to them. I cannot however imagine any reason for stopping the sale, the property not being situate in the jurisdiction of the judge of Benares.

† Surfraz Ali, Plaintiff, *versus* Ramlol and Joogool Kishore, Defendants.

In the same manner in another case (see margin†) a hookumnameh in execution of a decree having been issued against a certain Joogool Kishore defendant, from my court, through the Benares court; the person attending on the part of the decree-holder pointed out the said Joogool Kishore, and he was consequently arrested and brought before the Benares court, when the judge of that court released him unconditionally, stating for my information that he denied that he was the Joogool Kishore in question. The decree-holder

immediately requested that the court would send a proceeding requesting that he might be again arrested, which I did, but the individual against whom the process had issued in the mean time found means to conceal himself. The decree-holder positively asserted the identity of the person arrested, (which was attested by four peadahs who were present at the time of his arrest,) and complained bitterly of his release. Now it seems to me that the judge of Benares was not authorized in releasing the person arrested without proper enquiries on oath regarding his identity; and that had any person who disputed it even deposed on oath to the negative in opposition to the assertion of the decree-holder, he should not at all events have been released without sufficient security for his re-appearance when called for and without a reference to the court issuing the decree.

2. I have mentioned these two cases circumstantially with the view of obtaining the opinion of the Court on this point, viz. whether the person of an individual can be released from process of arrest, or his property from attachment and sale, by any other authority than that which issued the process. It would seem to me that a previous reference should be made to the authority issuing the process in each instance.

The Presidency Court, on the 11*th March*, 1836, *concurred in the construction of the Western Court.*

February 5*th*, 1836.

From the Officiating Judge of Zillah Nuddea to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 21*st December*, 1835.

No. 1001.
1831.
Reg. VIII.

I have the honor to solicit the opinion of the superior Court on the following points:

1. Are summary cases made over by the collector to the civil court under Regulation VIII. 1831, in consequence of regular suits having been previously instituted relative to the same matter, to be numbered and decided separately; or are the papers connected with them to be amalgamated with, and form part of the nuthee of the regular suit, and both cases to be disposed of in one decree?

2. What is the precise meaning of the term "regarding the same matter" in Section 14 of the enactment above referred to? Does it imply that whenever a regular suit is instituted in the civil court, regarding *the rent of the same land* for which a summary suit has been previously brought before the collector, the former is to be made over for decision to that officer, and vice versa, or is the transfer to take place only when the cases involve claims to rent *not merely of the same land but also for the same period?* Unless some restriction of this kind is observed great confusion may arise, as the following case which has actually occurred in this district will shew. A. sued B. summarily before the collector for the rent of certain lands for 1240 B. S. and obtained a decree, to set aside which B. brings a regular suit. Before however the latter was instituted, A. had brought another summary action against B. for the rent of 1241 B. S., and according to the wording of the enactment the regular suit must be made over to the collector if by the expression "the same matter" is to be understood generally the rent of the same land.

3. By Section 8 of the above Regulation, in regular suits for arrears of rent the *plaint* is expressly allowed to be written on paper bearing a stamp of one-fourth of the prescribed value. Is this rule to be considered as applicable to *all* or *any* of the subsequent pleadings? The avowed object of the legislature in authorising a reduction in the value of the prescribed stamp is "to give additional encouragement to persons having claims to arrears of rent to prefer regular suits on account of the same;" and it may therefore be presumed that the provisions of the Section in question were meant to include all the pleadings filed on the part of the prosecution; while on the other hand there appears to be no obvious reason why the indulgence should be extended to the defending party.

To the Officiating Judge of Zillah Nuddea.

I am directed to communicate to you the following replies to the queries contained in your letter of the 21st December last.

2. In reply to the first question, I am directed to state that cases made over by the collector under Regulation VIII. 1831 must be numbered separately, and each decided as a distinct suit, though both decisions may be simultaneous.

3. 2d Question. The term in Section 14, "regarding the same matter," is to be considered as meaning that the cause of action in both suits is identical. The applicability of the rule can only be made by the judge or other officer acquainted with the details of each case. If, in conformity with this construction, you should experience difficulty in deciding the case referred to in the conclusion of the 2d paragraph of your letter, the Court will be prepared, on receiving intimation from you to that effect, and on your supplying more explicit information on the subject, to issue such further instructions as may appear to be requisite.

See Construction No. 714.

4. 3d Question. It has been ruled* that suits instituted under Section 8, Regulation VIII. 1831, are to be considered in all respects as regular civil suits; consequently the pleadings and all other papers should be written on stampt or plain paper, according to the circumstances of the case, in the same manner as if the suit had been instituted on full stamp.

The Western Court, on the 4th March, 1836, *concurred in this construction.—Issued* 15*th April,* 1836.

February 12*th,* 1836.

No. 1002.

1803.
Reg. LIII. Sec. 2.
Bribery and corruption on the part of ministerial officers in the revenue department, punishable as a misdemeanor.

From the Session Judge of Zillah Bundelkund to the Officiating Register of the Court of Nizamut Adawlut, Western Provinces, dated 17*th February,* 1836.

Two cases have been made over to this court for trial on the charges annexed, and the futwa in both declares the defendants liable to *ahoobut;* but before issuing orders on the cases in question, I am anxious to be informed whether the charges are of a nature cognizable by this court under Section 2, Regulation LIII. 1803, or any other Regulation.

2. It will be observed that of the parties accused two are officers in the revenue department and one a treasurer, whereas the regulations regarding bribery and corruption refer only to ministerial officers of the courts of judicature; nevertheless Jewun Ram, acting peishkar of the huzoor tuhseel, was punished by the Nizamut Adawlut on a charge of bribery, and Oodlall Kait, head writer in the collector's office of Tirhoot, was found guilty by the same Court, on the 22d May, 1820, of a misdemeanor in aiding and abetting in embezzlement.

To the Session Judge of Zillah Bundelkund, dated 4th March, 1836.

With reference to your letter of the 17th ultimo, in the case of Dwarkadoss and another charged in the first count with bribery and corruption, they being at the time ministerial officers of Government in the revenue department, I am directed to communicate to you the opinion of the Court that the acts abovementioned clearly amount to a misdemeanor according to the Mahomedan law, as shewn by the futwa of your law officer, and are punishable as such under the rule laid down in Clause 7, Section 2, Regulation LIII. of 1803.

2. In addition to the cases quoted in your letter in which this principle would appear to have been acted upon, I am directed to call your attention to the precedents established by the decisions of the Court in the trials cited in the margin,* to which you do not appear to have adverted.

The Presidency Court, on the 25th March, 1836, *concurred in this construction.*

March 4th, 1836.

* Government *versus* Lokmun. Page 229, Vol. II. Nizamut Reports. Government *versus* Ghoolam Akbee. Page 463 ditto. Government *versus* Zhem ool Abadeen another. Page 37, Vol. III.

Resolution of the Presidency Court of Sudder Dewanny Adawlut, under date the 18th March, 1836.

No. 1003.

1831.

Reg. V. Sec. 28, Cl. 1.

The Court, having read again the minutes communicated to the Court of Sudder Dewanny Adawlut for the Agra presidency with their letter of the 8th January last, and the Agra Court's reply dated the 5th ultimo, No. 166, resolve in concurrence with the opinion of the Western Court, on the following rule of practice.

2. Whenever it shall appear to the Court, that a sudder ameen or moonsiff has tried and determined a suit which, from its amount or other cause, was not legally within his cognizance, and that the zillah or city judge, without adverting to this fact, has decided an appeal therefrom according to its merits, this Court will admit a summary appeal from the judge's order; and, considering the original decision of the sudder ameen or moonsiff and the judgment of the zillah or city judge in the appeal equally null and void, will quash all the proceedings of the case, and direct the judge to cause the original suit to be tried *de novo* by the authority competent to do so.

Resolution of the Presidency Court of Sudder Dewanny Adawlut, under date the 25th March, 1836.

No. 1004.

Putnee talooks as such are sufficient security in cases appealed to the King in Council, if otherwise unexceptionable.

Resolved, with the concurrence of the Western Court, that a sudder putnee talook, unexceptionable in all respects, as such, shall be considered as sufficient security in cases appealed to the king in council, to the extent of the surplus proceeds thereof.

March 25th, 1836.

From the Commissioner of Circuit for the Bareilly Division to the Officiating Register of the Court of Nizamut Adawlut, Western Provinces, dated 21st March, 1836.

No. 1005.

Magistrates are not competent to permit convicts to work on the roads, who have not been sentenced to labor.

I have the honor to forward copy of a letter from the magistrate of south Moradabad of the 19th instant, and request you will intimate to me if the Court are aware of any objection to my authorizing the magistrate to comply with the prisoners' request to be allowed to work on the roads.

From the Magistrate of Zillah Moradabad to the Commissioner of Circuit for the 3d or Bareilly Division, Moradabad, dated 19th March, 1836.

I have the honor to submit that three prisoners, sentenced to imprisonment without irons, to labor inside the jail, have petitioned to be allowed to work on the roads and agree to have gyves put on their legs. As these men can certainly be employed on the roads with more benefit to the state, I solicit your sanction to send them to work outside the jail. I also solicit your authority to send other men on the roads, should they wish the milder sentence of labor inside the jail to be altered.

To the Commissioner of the 3d or Bareilly Division.

In reply to the question submitted in your letter of the 21st of the preceding month, relative to the prisoners named in the margin,* I am directed to communicate to you the opinion of the Court that you are not competent to make any alteration in the sentence passed on those prisoners respectively.

* Shadee, Sibbah, and Sullah.

The Presidency Court, on the 8th July, 1836, concurred in this construction.

April 8th, 1836.

From the Officiating Register, Western Provinces, to the Register of the Presidency Court of Nizamut Adawlut, dated 15th April, 1836.

No. 1006.

1824. Reg. XV.

I am directed to request you will submit, for the consideration and opinion of the Calcutta Court, the accompanying copies of a letter from the commissioner of circuit of the 2d or Agra division, under date the 6th February last, and of the answer which the majority of the Court, adverting to the object and design of Regulation XV. of 1824, as explained in the preamble, propose, with the concurrence of the Calcutta Court, to address to that officer in reply.

From the Officiating Commissioner of the 2d Division to the Officiating Register of the Western Provinces, dated 6th February, 1836.

Some public officers in this division having expressed a doubt, with reference to the Court's construction of Regulation XV. 1824, dated the 17th December, 1830, as to the answer which should be given to the following questions, may I request you will have the goodness to lay them before the Court for its reply?

Q. 1. Can a magistrate under the Regulation quoted interfere to maintain the possession of a mortgagee, in the event of the mortgager and the proprietor of the property attempting to eject him by force?

Q. 2. Would the circumstance of the registry or non-registry of the mortgage and transfer of the property (if a landed estate) affect the powers of a magistrate in such a case?

2. After a careful consideration of the Court's construction above alluded to, and in which the words "all parties not having each a permanent interest in the land or other property of which the possession is disputed" are used, I should be disposed myself to give a negative answer to both questions, though I am not quite certain that it would be the correct one in the case of a registered mortgagee as he might be looked upon pro-tempore as a proprietor.

To the Commissioner of Circuit, 2d or Agra Division.

I am directed to communicate to you the opinion of the Court on the first point referred in your letter of the 6th February last, that the provisions of Regulation XV. 1824, are applicable to cases of disputed possession between mortgagers and mortgagees whenever such disputes may appear to the magistrate likely to terminate in a breach of the peace; and as regards the second point, that it does not in any way affect the question whether the mortgage, or transfer of property under it, shall have been registered or not.

To the Register of the Nizamut Adawlut, Western Provinces, dated 20th May, 1836.

I am directed by the Presidency Court to acknowledge the receipt of your letter of the 15th ultimo, No. 308, enclosing copies of a letter from the commissioner of circuit for the 2d or Agra division under date the 6th February last, and of a reply to the same which the majority of the Court propose to transmit with the concurrence of this Court.

2. In reply, I am directed to state that the majority of the Court concur in the construction which the majority of the Agra Court propose to adopt in their answer to the commissioner.

May 20th, 1836.

To the Judge of Zillah Bhaugulpore.

No. 1007.

The local position of a Hindoo family does not necessarily determine the law by which their disputes ought to be decided.

I am directed to inform you that the case adverted to in your letter of the 23d March last should be decided according to the Hindoo law current in the pergunnah in which the family reside, provided it accords with the family usage; otherwise the latter must form the rule of guidance.

2. I am also directed to refer you to the cases noted in the margin,* as shewing that the local position of a family does not necessarily determine the law by which their disputes ought to be decided.

* Rajchunder Narain Chowdry, Appellant, *versus* Gocol Chunder Gop, Respondent.	Page 43, Vol. I. Select Reports.
Gungadutt Jha, Appellant, *versus* Sree Narain Rai and another, Respondents.	Page 11, Vol. II. Ditto.

The Western Court, on the 13th May, 1836, *concurred in this construction.—Issued 10th June,* 1836.

April 22d, 1836.

From the Secretary to the Sudder Board of Revenue, Western Provinces, to the Officiating Register of the Sudder Dewanny Adawlut for the Western Provinces, dated 29th March, 1836.

No. 1008.
1799.
Reg. V.
1803.
Reg. III. Sec. 16.

I am directed by the Sudder Board of Revenue to request the favor of your submitting to the Sudder Dewanny Adawlut at Allahabad the following observations regarding doubts which appear to have arisen on the construction of Section 16, Regulation III. of 1803.

2. The Board direct me in the first instance to state the circumstances under which the question was brought before them, and subsequently their views on the proper construction of the enactments in question, for the consideration of the Court.

3. A case came before the Board on occasion of a disputed succession to a landed estate; the collector had entered into a judicial investigation, taken an opinion from a law officer, and finally directed the parties to be put in possession of such shares as he considered to be their right.

4. The Board directed the whole of those proceedings to be annulled, and having seen cause to believe that many of the revenue officers in the Western Provinces were accustomed to usurp the exercise of judicial authority, and thereby in fact incur the penalty of contempt of court, a circular was issued prohibiting any such practice.

5. At the same time as the very act of adopting this illegal and irregular proceeding evinced on the part of the collectors an acquaintance with the laws enacted for their guidance, the Board judged it expedient to indicate to them distinctly under what department such cases would properly fall. This was done not with the remotest view of taking upon themselves to point out to the courts their duty, but to make the revenue officers understand that the utmost legal limit of their interference was confined to bringing the case to the cognizance of the only authority legally entitled to dispose of it.

6. The Board's view is that a collector is strictly an executive officer and has naturally no connection or concern with judicial authority. In this opinion they consider themselves borne out in the strongest manner by the latter part of the preamble to Regulation II. and by the whole preamble to Regulation III. of 1793 which may be considered as fundamental and constitutional laws. The Board have drawn the same conclusion from the fact of the collectors in their official capacity having been made subject to the jurisdiction of the courts.

7. The Board therefore consider that every instance, in which, from reasons of present expediency and necessity rather than from the dictates of sound and durable policy, judicial powers have in later times been given to collectors, must be looked on not as a rule but as an exception; and as a corollary to this conclusion they consider that the collectors must be limited strictly to that extent of judicial power which the law has explicitly conferred upon them.

8. Now the only judicial power which the law has conferred on collectors is, 1st, the power to try summary suits regarding rent and replevin; 2d, to try the validity of claims to hold land free of assessment; 3d, the power to try certain cases

conferred on collectors employed in making or revising settlements. No power has ever been given to try the right or title to succeed to or transfer landed property.

9. Collectors are directed by the Regulations, as ministerial officers, to record successions or mutations of parties on whom they are to look as responsible for the public revenue, when they find such to have occurred; but there is no authority given to them to question, still less to decide, the right to succeed or to transfer.

10. The Board however have found the collectors in the Western Provinces much inclined to usurp such a power, and their native officers (from obvious causes) much disposed to encourage them in this usurpation; and the Board are therefore desirous strictly to prevent any such, in their view, illegal and extra-judicial interference.

11. Yet it seems necessary that a power should somewhere reside, to declare who should, *vacante lite*, obtain possession, pending a solemn judicial investigation into the right of many claimants to succeed to a demised estate; and that power should, in the opinion of the Board, both according to the Regulations of Government and the rule of analogy, reside in the courts.

12. If such a power conforms in all respects with the essential functions of a court of equity, the Board direct me to remark, that they are told the province of equity is to prevent that evil which it is the business of law to redress. To reduce the question from a general definition to particular terms, it may be said to be strictly the province of equity to prevent by previous arrangement the injury and loss of property which must arise from contested management and uncertainty of title, in an estate charged with a heavy revenue to Government realizable by public sale.

13. It seems to the Board that the object of Regulation V. of 1799, and of Section 16, Regulation III. of 1803, is to provide for just so much interference on the part of the court as has been above stated to be an essential part of an equity jurisdiction.

14. By those laws the courts are prohibited to interfere where the deceased has left a will and appointed executors.

15. Also where there is a single heir entitled to succeed to the whole estate.

16. Also where there is more than one heir and they agree among themselves as to the management.

17. The policy and sound reason of these prohibitions are obvious. There is no case which can require interference before trial.

18. If of many claimants one or more may have taken possession (the Board would remark that the verb is in the preterite tense) the court can only interfere previously to trial by a demand of security. But if security be not given the court may interfere to protect the property, or, according to the definition of equity above quoted, to prevent the evil which law could only redress.

19. The Board now proceed to the case which they contemplate, and in which the law has fully acknowledged the equitable jurisdiction of the courts previous even to suit brought. The case is that in which there "may be no person authorised and willing to take charge of the estate of a person deceased."

20. The Board conceive that these two essential terms (authorized and willing) are to be understood in strict connection each with the other. There may be many persons *willing* to take charge of the estate, but the question is whether they be authorized also.

21. The Board, wishing to give a strong but desirous of putting a common case, will instance that of a man in full vigour of intellect managing his own landed estate, who dies of fever or any rapid complaint, intestate of course, and leaving several grown-up sons by different wives,—all are on the spot, each seizing the ryuts, calling on the police, and raining down petitions on the collector, the magistrate, and the civil court. There is no possibility of any one having taken possession, for all are engaged in a struggle. They will never agree—and who among them can be authorized in exclusion of the rest?

22. It seems to the Board to be the intention of the law that in such a case the civil court should interfere, and either put the estate in charge of one of the parties as administrator, taking security from him for the effects until there have been time for a decision on the claims of all by a regular suit, or that he should place the estate in charge of the collector to be kept in trust until some one shall bring suit to try his claim.

23. If the Board's view be considered just in this strong case then it will obviously be the duty of the court to exercise previous interference in every case where there may be several claimants and no one may have taken possession.

24. The Board would also beg permission to suggest that in considering a legal enactment, the whole context and the spirit of the whole enactment must be taken into the argument. In fixing the meaning of the expression "may have taken possession" in Section 4, there are, in the view of the Board, two points for consideration—1st, as above noticed, the verb being in the preterite tense, which implies a foregone act, something which occurred previous, to the question being raised; 2d, that the possession referred to must mean legal and peaceable possession at the time it was taken, though subsequently challenged. It must be a taking possession, as declared in Section 3, "so far as the same can be done without violence:" where such previous peaceable possession is not, it seems to the Board that the Regulation authorizes and requires the courts of justice to interfere.

25. The Board find a reference to these enactments in the book of Constructions, pages 127-128, Baptist Mission Press edition, No. 310. In paragraph 4 of that letter, containing the construction referred to, the Sudder Dewanny Adawlut appear to consider the civil courts authorized to declare in whom the title rests, subsidiarily of course to and pending decision on a regular suit.

26. The Board have also heard of a similar decision on a case of some importance in zillah Burdwan or Nuddea, but they have not at present the papers at command.

27. The commissioner of the 4th division has forwarded to the Board copy of the Court's letter, dated 25th February, addressed to the judge of Bundlekhund; but as the reference made by the judge did not embrace the general question, the Board do not feel

themselves thereby precluded from requesting the Court to take the subject into consideration. The Board request the Court will be pleased to take the whole question into their consideration and favor the Board with their decision on the above point.

28. The Board direct me to submit that this question as regards them is far from a mere speculative matter. It is of great importance to the revenue administration to be authoritatively informed at an early period, in case of a disputed succession after the occurrence of a lapse, to whom they are to look as responsible for the Government jumma; and in the opinion of the Board no authority but a judicial one can resolve the question.

To the Secretary to the Sudder Board of Revenue, Western Provinces.

I am directed to acquaint you, for the information of the Board, that as intimated therein, the Court have consulted with the Calcutta Court of Sudder Dewanny Adawlut on the subject discussed in your letter, No. 14, under date the 29th March last; and they now direct me to communicate to you the following observations in reply.

2. The Court have again had before them the correspondence with the officiating judge of Bundlekhund, alluded to in the 27th paragraph of your letter, and after duly considering the circumstances therein detailed, they direct me to observe that they see no reason to alter the opinion expressed in their reply to that officer on the point referred by him, viz. that, in the particular cases which formed the subject of his reference, he was not competent to interfere except on the institution of a regular suit by the parties concerned.

3. In one of those cases, the Court observe, the dispute in regard to the succession lay between the widow of the deceased zumeendar and a person claiming as purchaser; and there cannot be any question, the Court apprehend that instead of certifying the case to the judge, and requiring him to pass orders in the matter under the provisions of Regulation III. of 1803, the collector should have proceeded to register the widow's name in the place of her husband's leaving the other party, if he thought proper, to institute a regular suit in the civil court under the alleged deed of sale for possession of the property sold. The circumstances of the other cases brought to the notice of the Court by the officiating judge of Bundlekhund were nearly similar to those just related: and the Court are of opinion that they should have followed the same course.

4. In the 4th paragraph of your letter, however, it is stated that many of the revenue officers in these provinces have been in the habit of exercising judicial authority in cases of disputed succession to the estate of a deceased zumeendar, entering into a judicial investigation of the claims of the several claimants, and, in some instances, directing the parties to be put in possession of such shares as appeared to be their right; it would appear therefore that the collectors have gone beyond the line of their duty, more especially in awarding possession. The Court observe that the rules for the guidance of the revenue authorities in such cases are clearly laid down in Section 41, Regulation XLII. of 1803, which requires that, on the receipt of a notice of any person having succeeded by inheritance to the property of a malgoozaree estate or lakhiraj tenure, the collector shall

institute such inquiry as shall appear necessary to ascertain the truth of the alleged succession, and if the same may appear to have taken place he is to cause the necessary entries to be made in the proper registers; and the Court are of opinion that if the collectors were enjoined strictly to conform to those rules, the inconvenience stated to have arisen, and of the existence of which the Court had no previous knowledge, would no doubt immediately cease.

5. With regard to the nature and extent of the jurisdiction to be exercised by the civil courts in cases of the nature of those under discussion, the Court direct me to observe that the general rule prescribed for their guidance is prohibitory of any summary interference; and although cases may arise which might justify an exception and require the interference of the civil authority, such for instance as the one described in the 21st paragraph of your letter, the Court can by no means concur in the general position assumed in the 23d paragraph, that it is the duty of the courts to exercise previous interference in *every* case where there may be several claimants merely on the ground that none of them had taken possession. But so much must depend upon the circumstances of each case that, in the existing state of the law, it appears to the Court that it would be inexpedient and open to objections to lay down, in the form of circular instructions, any further rules for the guidance of the judicial officers, who must regulate their proceedings according to the peculiar circumstances of each case, as it may arise or be brought forward either on the motion of the collector or by the parties interested, as provided for by Section 26, Regulation V. of 1812.

6. As however the subject is one of general interest and importance, and it is highly desirable that some clear and specific rules should be laid down for the guidance of the authorities of both departments, the Court propose to forward the correspondence that has taken place with the Sudder Board, to the Indian law commissioners with a view to their taking the subject into consideration, and introducing such provisions in regard to it into the civil code, now in the course of preparation, as may appear to them necessary and expedient.

The Presidency Court, on the 17th June, 1836, *concurred in this construction.*

May 19th, 1836.

Extract of a Letter from the Judge of Zillah Tipperah to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 9th April, 1836.

No. 1009.
1814.
Reg. XXVIII.
Secs. 4—12
* Ramgopaul, Ramgovind and others, *versus* Rubbee Doss and others.

The suit noted in the margin* was instituted by the plaintiffs' claiming defendant and others as slaves, and the damages were laid at six hundred rupees. On the 8th Chyte 1241, B. S. a decree was given in favor of the former by the principal sudder ameen. On the 11th Assaur 1242 B. S. the defendant Rubbee Doss, being dissatisfied with the decision, presented a petition of appeal under the provisions of Section 12, Regulation XXVIII. of 1814, praying to be permitted to sue *in formâ pauperis.* On perusal of the petition of appeal and the decree passed by the principal

sudder aumeen, it appeared to me that there was sufficient cause to merit a further investigation of the case in appeal; and I would at once have admitted it had I not entertained doubts as to the propriety of so doing, it being, a case, the subject matter of which appears in my judgment to come under the denomination of "personal injuries," laid down in the 4th Section of the Regulation above mentioned. I therefore deem it expedient to submit the point for the consideration of the Superior Court, and request the favor of your obtaining its opinion whether the construction I have put upon the aforesaid Section, regarding "slavery" coming under the head of "personal injuries," be correct or otherwise, and consequently whether Rubbee Doss should be permitted to sue in appeal as a pauper or not.

To the Judge of Zillah Tipperah.

I am directed to inform you that, in the opinion of the Court, a person adjudged to be the slave of another is entitled to appeal against the decision *in formâ pauperis.*

The Western Court, on the 10*th June,* 1836, *concurred in this construction.—Issued* 24*th June,* 1836.

May 20*th,* 1836.

Extract of a Letter from the Judge of Zillah Rajshahye to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 18*th March,* 1836.

No. 1010.

Circular Orders Nos. 1, 90, and 164, Vol. II. dated respectively, 6th June, 1828, 19th July, 1833, and 2d January, 1836.

Para. 5. There is yet another difficulty to which I must allude. The realization of the amount decreed being thus indefinitely postponed, (should my construction of the Court's order be correct,) on whom should the demand for interest accruing thereon be made? Any delay in the non-receipt of the full amount by the decree-holder is not the act of the individual against whom judgment is given, though in many cases perhaps originating in his collusion with connexions or dependents, one of whom is put forward as a claimant as often as the lands are advertised; to charge him therefore with interest would be unjust; the decree-holder, on the other hand, is entitled to interest on his decree till the whole amount is discharged.

To the Judge of Zillah Rajshahye.

With reference to paragraph 5 of your letter of the 18th March last, No. 16, I am directed to inform you that the Court consider it competent to you, under the circumstances stated, to impose the payment of the accruing interest of the debt on any claimant, whose objections may in your judgment be evidently collusive and litigious, or vexatious and unfounded, subject of course to an appeal to this Court.

The Western Court, on the 24*th June,* 1836, *concurred in this construction.—Issued* 8*th July,* 1836.

June 3*d,* 1836.

From the Session Judge of Bundelkund to the Officiating Register of the Court of Nizamut Adawlut, Western Provinces, dated 21st May, 1836.

No. 1011.
1814.
Reg. XV. Sec. 2, Cl. 3.

I have the honour to report, for the information of the Court, that, independent of the cases against Kishen Kishore, late serishtedar of the collector's office, entered in my monthly returns for April, there are three other cases committed for trial: but conceiving that the ends of public justice have been sufficiently answered by the punishment already awarded, under the discretion left to me by Regulation XV. 1814, I do not purpose proceeding with these, unless my award already issued shall be reversed in appeal by the Court, or the Court shall require me to enter on their investigation. I am particularly led to adopt this course in consequence of the very heavy list of cases pending.

To the Session Judge of Zillah Bundelkund.

Kishen Kishore.

I am directed by the Court to acknowledge the receipt of your letter, No. 74, under date the 21st ultimo, in the case of the prisoner named in the margin.

2. In reply, I am directed to communicate to you the opinion of the Court, that under the provisions of Clause 3, Section 2, Regulation XV. of 1814, the terms of which are imperative, you are required to proceed with the trial of the remaining charges against the prisoner, or such number of them, until upon a consideration of the several acts of criminality established against him, you may be of opinion that the punishment of fourteen years' imprisonment, prescribed in the Clause above cited, is sufficient and adequate to the crimes charged, and that no reason therefore exists for trying the remainder.

The Presidency Court, on the 1st July, 1836, *concurred in this construction.*
June 10th, 1836.

From the Officiating Session Judge of Zillah Hooghly to the Register of the Presidency Court of Nizamut Adawlut, dated 9th June, 1836.

No. 1012.
1818.
Reg. VI. Sec. 3, Cl. 4.
Employment of vakeels in criminal trials.

With reference to an important trial which will soon come before me, I have the honor to solicit the opinion of the Court of Nizamut Adawlut, in regard to the employment of vakeels in trials in the Sessions Courts, whether permitted or not sanctioned by the Regulations, when the personal attendance of the prisoners may not be dispensed with.

2. I submit with deference, that Regulation VI. of 1818, and other Regulations which speak of vakeels in connexion with parties accused at criminal trials held in Sessions Courts, appear only to sanction their employment, as agents or representatives, when the accused party may be specially exempted from personal attendance, but neither contemplate nor authorize the interference of any person as vakeel between the judge and a prisoner in attendance at the trials.

3. Still however, with a view to afford every just opportunity to render the defence of a prisoner complete, I should feel disposed to permit him to receive the advice and counsel

of persons whom he might wish to consult during the trial, although the aid of a vakeel or agent specially authorized to plead and act on his behalf might be denied.

To the Officiating Session Judge of Zillah Hooghly.

I am directed to communicate to you, in reply to your letter of the 9th June last, the opinion of the Court, that parties committed for trial before a Sessions Court, and not exempted from personal attendance under the provisions of Section 3, Regulation VI. 1818, may be allowed to avail themselves on trial of the advice of vakeels or agents; but that such vakeels or agents cannot be permitted to plead or to interfere in any way whatever in the Court's proceedings.

The Western Court, on the 20*th June,* 1836, *concurred in this construction.—Issued* 8*th July,* 1836.

June 10*th,* 1836.

To the Officiating Commissioner of the 3*d or Bareilly Division.*

No. 1013.

A commissioner is not competent to authorise the release of a convict, either on security or otherwise, for the purpose of apprehending a proclaimed offender.

I am directed to communicate to you the opinion of the Court, that you are not competent to authorize the release from confinement, either on security or otherwise, of any convict under sentence, for the purpose specified in your letter of the 2d June last, that is, of apprehending proclaimed offenders.

The Presidency Court, on the 1*st July,* 1836, *concurred in this construction.*

June 17*th,* 1836.

From the Commissioner of the 4*th or Allahabad Division to the Officiating Register of the Sudder Nizamut Adawlut for the Western Provinces, dated* 4*th June,* 1836.

No. 1014.

1808.
Reg. XIII. Sec. 13.
Responsibility of the nazirs of criminal courts in reporting upon the validity of security.

I have the honor to request that I may be favored with the opinion of the Court on the following case of reference.

2. Under the provisions of Section 13, Regulation XIII. of 1808, nazirs of civil courts are held responsible for any wilful misrepresentation in reporting on securities which are filed for staying the execution of decrees, &c. but the same rule does not appear to have been extended to nazirs who are employed in fouzdaree courts. I request to be informed whether a fouzdaree nazir can be held responsible for, and be compelled to make good, such pecuniary loss as may result from the acceptance of inadequate security, which has been wilfully misrepresented by the nazir as good and sufficient for the purposes for which it was taken.

3. I consider it of importance that all doubt on the subject should be removed as in addition to reporting on security bonds filed in the magistrates' courts, the fouzdaree nazirs are occasionally required to attest others not unfrequently of large amount, which are referred to the magistrate by officers in the commissariat department.

To the Commissioner of Circuit of the 4th Division.

I am directed to observe that the rule quoted in your letter of the 4th of June last, is, as you remark, applicable only to nazirs of the civil courts. The Court are not aware of any regulation expressly declaratory of the responsibility of nazirs of the criminal courts under similar circumstances; but upon general principles they are of opinion, that in the event of its being shewn on a civil prosecution that the nazir of a criminal court had wilfully misrepresented the value or sufficiency of any security in regard to which he had been directed to enquire and report, and that loss had ensued in consequence of such misrepresentation on his part, he would be liable to the payment of damages at the discretion of the court before whom the suit was brought.

The Presidency Court, on the 8th July, 1836, *concurred in this construction.*

June 17th, 1836.

To the Judge of Moorshedabad.

No. 1015.

1793. Reg. XXXVI. Sec. 7. 1803. Reg. XVII. Sec. 7.

I am directed to communicate to you the opinion of the Court, (in which the Court of Sudder Dewanny Adawlut for the Western Provinces have concurred,) that under the strict wording of Section 7, Regulation XXXVI. of 1793 and Section 7, Regulation XVII. of 1803, and the construction No. 14 of the printed book of constructions, dated the 29th November, 1805, the registry of a deed in any other district than that in which the land is situated, must be considered as inofficial, and as not entitling the deed to the preference conferred on registered deeds by Section 6 of the Regulations cited.

The Western Court, on the 8th July, 1836, *concurred in this construction.—Issued in July,* 1836.

June 17th, 1836.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Nizamut Adawlut, dated 17th June, 1836.

No. 1016.

Duty of the commissioners in regard to the release and removal of sick prisoners.

I am directed to request you will submit, for the consideration of the Calcutta Court, the accompanying copies of a letter and its enclosures from the officiating commissioner of circuit for the 3d division under date the 6th instant, relative to the cases of certain prisoners under confinement in the jail of Moradabad, whose release, in consideration of their bodily infirmities, as certified by the civil surgeon, he has conditionally authorized, pending a reference to this Court.

2. As a general rule the Court propose, with the concurrence of the Calcutta Court, to inform Mr. Boulderson, that a commissioner of circuit is not competent, under the circumstances stated in his letter, to authorize the release from confinement, on security or otherwise, of any convict under sentence of imprisonment without previously obtaining the sanction of the Court to his so doing; but that whenever the bodily health of any

prisoner may be such as, in the opinion of the civil surgeon, to render his temporary removal from the jail or hospital absolutely necessary, either for his own recovery, or, if the disorder be of a contagious nature, for the safety of the other prisoners, or for any other good and sufficient cause, and the emergency of the case will not admit of a previous reference to the Court, the proper course for the commissioner to pursue, under such circumstances, is to authorize and direct the magistrate to engage any suitable building, which may be procurable for the accommodation of such prisoner either within the town, or, if change of air be the object of his removal, in any of the neighbouring districts, according as the surgeon may advise, adopting the necessary measures for his safe custody and to report the circumstance without delay for the information and orders of the Court.

June 17th, 1836.

To the Officiating Register of the Nizamut Adawlut, Western Provinces, dated 16th July, 1836.

I am directed by the Presidency Court to acknowledge the receipt of your letter of the 17th ultimo, No. 507, enclosing copies of letter from the officiating commissioner of circuit for the 3d division under date the 6th ultimo, and its enclosures, and of a reply to the same which the Western Court propose to transmit with the concurrence of this Court.

2. In reply, I am directed to state that the Court generally concur in the construction which the Western Court propose to adopt in their answer to the officiating commissioner, though they are of opinion that, provided a removal to a distance be deemed essential, and the disorder with which the sick prisoner may be affected be not contagious, the change might best be made to the jail hospital of some neighbouring zillah.

From the Officiating Judge of Zillah Shahabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 30th May, 1836.

No. 1017.

Power of a surety to alienate property, of which in the security bond he calls himself proprietor, but which is not specifically pledged as security for the principal debt.

May I request the favor of your obtaining for me the opinion of the Court on the following point? It is one which probably has been repeatedly before the Court and with respect to which its practice is sufficiently established.

A becomes surety for B (on the latter borrowing a sum of money designating himself as proprietor of certain estates,) but without expressly stating that such property is pledged as security for the debt. The security bond may generally be in the following terms: "Whereas B has borrowed so much money, I, proprietor of such an estate, bind myself as surety for the debt; in default of payment by B, I will liquidate the debt." In such case can A legally alienate the property of which in the bond he calls himself owner until the debt has been satisfied?

To the Officiating Judge of Zillah Shahabad.

I am directed to communicate to you, in reply to your letter of the 30th May last, the opinion of the Court, that supposing A on becoming security for B (on the latter's

borrowing a sum of money) to designate himself as proprietor of certain estates, without expressly stating that those estates are pledged as security for the debt, he (A) is not legally precluded from alienating the said property, during the continuance of his liability for the security into which he has entered.

The Western Court, on the 15*th July*, 1836, *concurred in this construction.—Issued* 27*th July*, 1836.

June 24*th*, 1836.

To the Officiating Register of the Nizamut Adawlut, Western Provinces, under date the 24*th June*, 1836.

No. 1018.
1822.
Reg. VII. Sec. 24, C. 3.
Issue of process by collectors to police officers.

I am directed by the Court to request you will lay before the judges of the Court of Sudder Dewanny Adawlut for the Agra presidency, the accompanying copy of a letter from the officiating commissioner of circuit, 12th division, dated the 16th ultimo, No 264, and its enclosures, requesting the Court's opinion as to the right of a collector, or officer exercising the power of collector, to issue orders to the police officers to aid in the execution of their process under the provisions of Clause 3, Section 24, Regulation VII. 1822.

2. The Court propose to communicate to the commissioner their opinion that the collector or other officer aforesaid has no authority to issue any orders direct to the police officers, except in very emergent cases, which should also be immediately reported to the magistrate; but that in ordinary cases, whenever the collector may have reason to apprehend resistance of his process, he should communicate his apprehensions to the police darogha, who will be responsible for taking such precautionary measures as may in his opinion be necessary to prevent a breach of the peace.

The Western Court, on the 15*th July*, 1836, *concurred in this construction.*

June 24*th*, 1836.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny and Nizamut Adawlut, dated 1*st July*, 1836.

No. 1019.
1832.
Reg. VI.

A question having arisen as to whether under the provisions of Regulation VI. of 1832, an East Indian who, by reason of his descent, may not be a British subject within the meaning of the existing laws, is eligible to be employed as a juror or assessor on the trial of a native Indian, whether of Mahomedan or Hindoo persuasion, or of persons belonging to the same class as himself, I am directed to request you will submit the point for the consideration and opinion of the Calcutta Court.

2. The Court are of opinion that under the Regulation above cited and the constructions which have been given at different times, declaring persons of the class in question subject to the local courts in civil and criminal matters, in the same manner as other natives of India, they must be considered equally qualified with them to serve on juries,

or to be employed in either of the other modes laid down in the enactment under consideration; and they propose, should the Calcutta Court concur in this construction, to adopt it as a rule of future practice.

The Presidency Court, on the 29th July, 1836, *concurred in this construction.*

July 1*st,* 1836.

No. 1020.
1814.
Reg. XXIII. Sec. 74.
1832.
Reg. VII. Sec. 7.

In reply to a letter from the additional judge of Burdwan, dated 11th June, 1836, the Presidency Court held that under the provisions of Section 74, Regulation XXIII. of 1814, the judge, when he has modified or confirmed the order of a native judge imposing a fine, is to proceed to realize the same under the same rules as are prescribed for the execution of decrees. By Section 7, Regulation VII. of 1832, the native judges are authorized to execute their own decrees. The Court are therefore of opinion that the judge may refer his order in such cases to them for execution.

The Western Court, on the 22*d July,* 1836, *concurred in this construction.—The letter to the Additional Judge of Burdwan was issued* 12*th August,* 1836.

July 1*st,* 1836.

To the Judge of Zillah Bundelkund, dated 8*th July,* 1836.

No. 1021.
1826.
Reg. III.

With reference to your letter of the 10th March last, on the subject of the difference of opinion existing between yourself and the officiating magistrate of Banda, as to the extent of that officer's jurisdiction over prisoners confined in the dewanny jail under civil process, I am directed to acquaint you that under the provisions of Regulation III. of 1826, you are vested with no legal right to be considered as the medium of communication on the part of the magistrate with such prisoners.

2. At the same time the Court direct me to observe that under Section 6 of the foregoing enactment, you are fully at liberty to communicate with the prisoners in question whenever you may have occasion to do so, without reference to the magistrate.

3. Under this construction the officiating magistrate will of course recall the instructions issued by him to the darogah of the civil jail, desiring him whenever he had any reference to make either to your court or to the collector of the district in regard to any prisoner confined under civil process, to constitute his office the channel of communication; and you will direct him to continue to observe the practice which obtained with respect to matters of this nature prior to the issue of the orders in question.

Issued with the concurrence of the Presidency Court.

July 8*th,* 1836.

From the Officiating Judge of Zillah Shahabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, under date the 23d May, 1836.

No. 1022.
1831.
Reg. V. Sec. 5, Cl. 2.
Sec. 15, Cl. 2.
Sec. 18, Cl 1.
Power of native judges to try and decide suits respecting the right in slaves.

I have the honor to request the opinion of the Court of Sudder Dewanny Adawlut whether, under Clause 2, Section 5, Clause 2, Section 15, and Clause 1, Section 18, Regulation V. 1831, it is within the competency of the moonsiffs, sudder ameens and principal sudder ameens respectively to try and decide suits respecting the right in slaves.

To the Officiating Judge of Zillah Shahabad.

I am directed to communicate to you the opinion of the Court that, as the provisions of Sections 5, 15, and 18, Regulation V. 1831, which define the powers of moonsiffs, sudder ameens and principal sudder ameens as to the cognizance of suits, make no exception to slaves, they must be looked upon in the same light as other personal property, and suits regarding them be held cognizable by the native judges. The Court at the same time direct me to add that they consider it highly inexpedient that such cases should go before a native, should the reference of them to a European judge be practicable.

The Western Court, on the 15th July, 1836, *concurred in this construction.—Issued 29th July,* 1836.

July 8th, 1836.

From the Officiating Judge of City Moorshedabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 18th June, 1836.

No. 1023.
1831.
Reg. V. Sec. 16, Cl. 2.

I request you will do me the favour to lay the following questions before the Court of Sudder Dewanny Adawlut for solution:

1st. Can a principal sudder ameen, authorized to try appeals from decisions of moonsiffs, refer back any case to the moonsiffs for further investigation?

2d. If a principal sudder ameen should, on trying an appeal as above, be of opinion, that a moonsiff has improperly nonsuited or dismissed a suit brought in his court, can he return the record, and through the judge request an order to the moonsiff to re-admit and re-try the case?

To the Judge of City Moorshedabad, in reply to his letter of the 18th June, 1836.

1st. The Court are of opinion that a principal sudder ameen, authorized to try appeals from the decisions of moonsiffs, may refer a case to a moonsiff for further investigation.

2d. Should he be of opinion that a moonsiff has improperly nonsuited a case, he should return it to the judge with his opinion that the moonsiff should be directed to re-admit it and try it on its merits.

The Western Court, on the 5th August, 1836, *concurred in this construction.—Issued 19th August,* 1836.

July 8th, 1836.

Resolution of the Presidency Court of Sudder Dewanny Adawlut, dated 8th July, 1836.

No. 1024.
1806.
Reg. II. Sec. 8.

The Court, having had under consideration the fluctuating practice which obtains with regard to allowing or disallowing appellants to assign or mortgage their own lands in lieu of security pending the appeal, observe that Section 8, Regulation II. of 1806, which authorizes the "deposit of money or of promissory notes or other obligations of "Government or any other sufficient money security" *in lieu* of personal bail or security for money or other property, is silent in regard to an assignment of the land of the party assured.

2. They further observe that the admission of such assignment is not fair to the respondent, inasmuch as it deprives him of a portion of his security; for, in the event of the appellant being cast, the respondent might always in the first instance come on his lands in satisfaction thereof; by the formal assignment he obtains no additional hold on them, while he is deprived of the benefit arising from the security of the lands of a third party.

3. Under these circumstances the Court deem the assignment or pledge of the lands of the appellant in lieu of security inexpedient, and of but doubtful legality, and accordingly

Resolve—That such assignment or pledge be not in future received.

The Western Court, on the 12*th August,* 1836, *concurred in this construction.*

July 8*th,* 1836.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 8th July, 1836.

No. 1025.
1814.
Reg. XXVIII.
Sec. 12, Cl. 3.

A question having arisen as to whether an appeal lies to the king in council from a summary order passed by the Court of Sudder Dewanny Adawlut, refusing on the grounds specified in Clause 3, Section 12, Regulation XXVIII. of 1814, to admit an appeal *in formâ pauperis* from the decision of a zillah judge, in which the sum or value awarded amounted to 50,000 rupees, the petitioner being, at the same time, left at liberty to institute his appeal on performing the conditions prescribed by the Regulations for persons not suing as paupers, I am directed to request you will submit the point for the consideration and opinion of the Calcutta Court.

2. The Court observe that in the case cited in the margin* it was ruled by the Court of Sudder Dewanny Adawlut that an order passed by a Provincial Court refusing to admit an appeal *in formâ pauperis* on the merits of the case, and without reference to the question of pauperism, was final and conclusive; and that in a note appended thereto, it is added that "the Sudder Dewanny Adawlut had on many occasions construed Clause "3, Section 12, Regulation XXVIII. 1814, as vesting the appellate authority with dis-"cretion to pass a final order not open to special appeal." The Court are of opinion that the same principle must be held to apply to orders passed by themselves of the nature of

* Syud Kulundur Ali, Appellant, *versus* Dhoomun Bebee & others, Respondents. Page 105, Vol. IV. S. D. Reports.

that described in the preceding paragraph, and that consequently no appeal lies from such orders to the king in council; and should the Calcutta Court coucur in this construction they propose to adopt it as a rule of future practice.

The Presidency Court, on the 4th August, 1836, *concurred in this construction.*

July 8th, 1836.

No. 1026.

1824.
Reg. X.
1829.
Reg I. Sec. 7.

Government
versus
1. John Sahib, alias DeCourcy, son of Mr. R. DeCourcy.
2. Pran Rai, son of Thenuk Sing.
3 Madhub Rai, son of Pran Rai.

Charge.—The first prisoner charged with taking the law into his own hands by causing to be apprehended, and afterwards torturing by heating a chillum in the fire and applying the same while hot, to the bodies of Ramdhun Ghose, Kunhye Ghose and Gopal Ghose, whereby they have been scorched; and with cutting off the prepuce of the said Ramdhun.

Prisoners 2 and 3 charged with being accessories before and after the fact by holding the abovementioned prisoners before and while the said application was being made, and keeping them in confinement in several places for sixteen days afterwards with a view to suppress the crime.

From the Officiating Session Judge of Zillah Nuddea to the Register of the Presidency Court of Nizamut Adawlut, under date the 27th May, 1836.

In the case noted in the margin committed for trial before me at the sessions, an accomplice has been admitted as a witness by the magistrate of this district under the provisions of Regulation X. 1824, as modified by Section 7, Regulation I. 1829.

2. The case is apparently one of an aggravated nature, and it is presumable that, without the testimony of this individual, the evidence would be insufficient for the conviction of the prisoners.

3. The Court however have held (see book of constructions No. 535) that "*affray not being enumerated in Clause* 1, *Section* 3, *Regulation X.* 1824, *as one of the offences which a magistrate is authorized to tender a pardon to the persons concerned in,* the evidence of participation in a case of affray is not admissible against other individuals implicated in the same offence." By parity of reasoning, as the charge for which these prisoners are committed, does not come under any of the denominations of crime specified in the clause above referred to, the evidence of an accomplice in the present case would be inadmissible. But the Court have, since the enactment of Regulation X. 1824, ruled on another occasion (see construction No. 405,) in a case of abortion, which is not one of the offences enumerated in Clause 1, Section 3, abovementioned, that the offer of pardon is not restricted to one individual concerned.

4. Under these circumstances, I am desirous to be informed; 1st, whether the evidence of an accomplice as an approver is admissible or not in the present case; and 2dly, if it be inadmissible, whether the party, who, in consequence of having accepted the tender of pardon has been admitted as a witness, ought to be committed for trial as a prisoner in the case.

To the Officiating Session Judge of Zillah Nuddea, dated 28th July, 1836.

I am directed by the Court to inform you in reply to your letter of the 27th May last, that it has been ruled that the provisions of Regulation X. 1824, are not applicable to the case of John DeCourcy and others, so that the magistrate was not competent to admit one of the accomplices in the crime charged as an approver.

2. The Court however observe that it is competent to Government, under the provisions of Section 6, Regulation XIV. 1810, to pardon an individual charged with a criminal offence, and deeming the present to be a fit occasion for soliciting the Right

Honorable the Governor of Bengal to exercise his prerogative, they request that you will instruct the magistrate to make the necessary application.

The Western Court, on the 17th June, 1836, concurred in this construction.

July 28th, 1836.

No. 1027.

From the Additional Judge of Zillah Burdwan to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 14th May, 1836.

C. O. Vol 2.
1, June 6. 1828.
90, July 19. 1833
164, January 2. 1836.

I would again beg to bring before the Court the subject referred to in their circulars as noted in the margin.*

* No. 164, 2d Jan. 1836
No. 90, 19th July, 1833
No. 1, 6th June, 1828.

2. In the form given at the end of the circular No. 144, it is stated, " that a perwanah be sent to the treasurer to hold, agreeably to the circular orders of the 6th June 1828, the amount proceeds of the sale in deposit for three months." On referring however to the circular No. 1, and to the Sections† of the Regulation quoted in it, it clearly appears, that only one month is allowed for objections to be made *to the Judge*, when any irregularity may have occurred in conducting the sale of real property; and if no objections should be made to the judge within one month, then the amount may be paid away at once. In case any objections should be made to the judge within one month, and the judge should overrule them, then by the Section noted in the margin‡, an appeal of three months lies to the Sudder, but by the circular No. 164, it is required, whether objections are made *or not made* to a sale, that the amount should, under the Sections of Regulation VII of 1828 quoted in the circular No. 1, be kept in deposit for three months, while those Sections do really only provide for cases, where only *one month* is in the first instance allowed for objections to be preferred *to the judge.*

† Reg. VII. of 1825, Sec. 3. Cl 3 Sec. 5, Cl. 1.

‡ Sec. 3. Cl. 5. Reg VII. 1825.

3. The circular No. 90 refers entirely to cases where appeals are actually preferred from a judge's decision, and three months is certainly the period allowed for such appeals; but nothing whatever is said of three months to be allowed for an appeal to the Sudder, where *no objections* may be made in the *first instance to the judge* within one month either before or after a sale. The following is a summary of this question:

Before a sale takes place.

4. By the Sections§ and Clauses as noted in the margin, thirty days are allowed for claims and objections to be preferred *to the judge;* and if none are made, the sale may be at once concluded. If objections or claims are made and rejected by the judge, then by the Section as noted in margin‖ three months are allowed for an appeal to the Sudder against the judge's decision.

§ Reg. VII. of 1825, Sec. 3, Cl. 2 and 6, noted. The period of proclamation in Cl. 6, is that of the 30 days in Clause 2.

‖ Section 3, Cl. 5.

After a sale takes place.

5. The Sections as noted¶ allow of one month for objections to be made *to the judge*, and for one month the money is to be kept in deposit,** and if no objections are made within one month after sale, the amount may be paid away. If objections are made to the judge

¶ Sec. 3, last part of Cl. 3.

** By Circular No. 1 of 1828.

within one month and they are overruled, then by the Sections as noted* the period for an appeal to the Sudder is three months.

* Sec 3, Cl. 5 and Sec. 5, Cl. 3.

7. No man can, agreeably to the practice of the civil courts, appeal to the Sudder Dewanny either before a sale takes place or after it is effected, until the judge has been first petitioned, and by the circular No. 1 and the sections quoted in it, one month is the period fixed for presenting petitions to the judge, but by the circular No. 164, it is generally understood, that this period is to be extended to three months. As it appears to me however, that the period of *three months* is for *appeals to the Sudder from the decision of the judge after claims or objections have been overruled by him*, I would beg to submit for the consideration of the Court, whether the proceeds of the sale of real property might not be paid away after the expiration of one month from the date of sale, provided no objections be made *to the judge*, within the period of one month allowed for such objections by the Sections of Regulation VII. of 1825, as quoted† in the circular No. 1 of 1828.

† Sec. 3, Cl. 3. Sec 5, Cl. 2.

7. A proposal similar to this was made in the seventh paragraph of my letter of the 16th February last, but as it was not referred to in the Court's *reply*,‡ I fear I was not sufficiently clear and explicit in submitting the proposition for their consideration.

‡ Dated the 11th March, 1836.

To the Additional Judge of Zillah Burdwan, dated 29th July, 1836.

I am directed to inform you that the view taken by you in your letter of the 14th May last, No. 20, in regard to the retention of the proceeds of sales in execution of decrees, is in the opinion of the Court perfectly correct, and I am instructed to take this opportunity of briefly stating the measures which should be adopted in such cases.

2. When claims or objections are preferred to the zillah judge before the sale, and rejected by that officer, the sale must be postponed for three months from the date of the judge's order.

3. When objections are preferred to a zillah judge after the sale, and by him similarly rejected and the sale confirmed, the purchase money must be kept in deposit for three months from the date of the order of the judge rejecting the petition and confirming the sale.

4. If on the other hand no claims are preferred before the sale, it may take place in thirty days, and if, after the sale, no objections are preferred within thirty days, the purchase money may, in like manner, be paid to the decree-holder at the expiration of that period.

The Western Court, on the 15th July, 1836, *concurred in this construction.*

July 29th, 1836.

From the Judge of Zillah Rajshahye to the Register of the Court of Sudder Dewanny Adawlut, dated 8th July, 1836.

No. 1028.

1831. Reg. VIII. Sec. 6.

I beg to refer to the superior Court for their construction of Section 6, Regulation VIII. of 1831. Do the words "shall be restricted to the period of one year from the date of the delivery of the collector's decision," imply a year from the date of pronouncing

judgment? or do they grant the power of instituting a regular suit, to set aside a summary award, to a party at any period within twelve months after the delivery of recorded judgment in the form of a roobakaree to an individual furnishing the required stamp paper? The text and the margin appear to be at variance.

To the Judge of Zillah Rajeshahye.

I am directed to communicate to you, in reply to your letter of the 8th July last, the Court's opinion, that the period of one year, to which the admission of regular suits to set aside the awards of the revenue authorities is restricted by Section 6, Regulation VIII, 1831, should be calculated according to the principle laid down in Clauses 10 and 11, Section 8, Regulation XXVI. 1814.

The Western Court, on the 19*th August*, 1836, *concurred in this construction.—Issued* 9*th September*, 1836.

July 29*th*, 1836.

Extract of a Letter from the Commissioner of Circuit for the 18*th Division, under date the* 16*th June*, 1836.

No. 1029.
1824.
Reg. XV.

Para. 3. With reference to the dismissal of one of the cases on default I avail myself of the opportunity of soliciting the opinion of the Court on the point, as to whether cases under Regulation XV. 1824, are liable to be dismissed on that ground.

4. In my judgment such a proceeding partakes much of the nature of an absurdity. The case is only brought upon the file by the *order* of the magistrate, for the express object of preventing a breach of the peace by declaring which party shall remain in possession, and subsequently to reject the case without deciding the point of possession, because one or both of the parties would prefer fighting out their quarrel to having it decided by the magistrate, appears to me a high mistake, and in a degree to authorize a recourse to measures of violence.

5. In the event of such a circumstance as both parties absenting themselves with a view to procrastinate the decision, I consider that the magistrate ought to issue an attachment under the provisions of Clause 3, Section 5, Regulation VI. 1813, but that in no case, should the cause be rejected from the file without a specific order as to possession.

To the Commissioner of Circuit for the 18*th Division.*

The Court are of opinion that if neither of the parties in a suit brought into the magistrate's court under Regulation XV. 1824, will appear and produce their evidence and proofs, the magistrate should strike the case off the file, taking such measures as may appear necessary to prevent a breach of the peace, extending even to the attachment of the property in dispute if deemed necessary to secure such prevention.

2. Should only one of the parties after due notice attend and produce his proofs, the case should be tried *exparte*.

The Western Court, on the 19*th August*, 1836, *concurred in this construction.—Issued* 9*th September*, 1836.

July 29*th*, 1836.

To the Register of the Nizamut Adawlut for the Western Provinces, dated 29*th July*, 1836.

No. 1030.

Annulment of commitments by session judges.

Declaration of the owner of stolen property in regard to its value, sufficient in the first instance to determine the court by which the case should be tried.

* Meetoo, servant of Syud Nazim Alee, peishkar of Monghyr Foujdary Court, prosecutor,

versus

Nermul and others.

Charge.—Nos. 1 & 2, theft of property amounting to 543 Rs. and Nos. 1 to 6, knowingly receiving stolen property.

† Poorun Singh, prosecutor,

versus

Sookha alias Soolha.

Charge.—Receiving property taken from the house of the prosecutor in a theft committed on the 12th March, 1836, (value of property stolen 140 Rs.) knowing the same to have been stolen.

I am directed by the Court to request you will lay before the judges of the Agra Court the accompanying copy of a letter from the session judge of Bhaugulpore and its enclosures, regarding the annulment of the commitment of the prisoners in the following cases.

2. In the first case noted in the margin,* the ground for annulment was the want of proof that the value of the property stolen was such as to render it incumbent on the magistrate to commit the prisoners. The Court propose to inform the session judge that the declaration of the prosecutor on oath as to the value of the property taken, the truth of which there is no reason to question, is considered sufficient, in the first instance, to determine the tribunal by which the case should be finally tried; and to direct him to desire the magistrate to consider his own orders on the case annulled, with exception to the acquittal and release of Moossummaut Moheea alias Mohnee, and recommit the case for trial to the sessions court. In regard to Moossummaut Moheea it will suffice to notice that the session judge did not direct the joint magistrate to discharge her, but that as he has done so the Court do not consider it necessary to direct her recommitment.

3. The Court also propose to inform Mr. Lang, the joint magistrate, that he ought not to have disposed of the case, as he had determined to refer the point involved in it for the decision of the Court, until he had been again directed to do so by the session judge.

4. The commitment of the second case† was annulled principally because there was no proof that the theft had been committed. But the Court propose to inform the session judge that in such case he ought either to have acquitted the prisoner, or, if he thought the charge against him susceptible of further proof, to have directed the joint magistrate to supply the defect, and not to have annulled the commitment, as the joint magistrate was fully competent, under the rules contained in Clause 3, Section 4, Regulation XII. 1818, to make over the prisoner for trial before the sessions court.

July 29*th*, 1836.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Nizamut Adawlut, dated 2*d September*, 1836.

I am directed by the Court to acknowledge the receipt of your letter, No. 1814, under date the 29th July last, with its enclosures from the session judge of Bhaugulpore and officiating joint magistrate of Monghyr.

2. On the general question involved in the first case referred by the officiating joint magistrate, viz. as to how far the statement of a prosecutor, unsupported by other testimony, is to be received in cases of theft with reference to the amount or value of the

property alleged to have been stolen,—I am directed to observe that the Court concur in opinion with the Calcutta Court, that the declaration of the prosecutor under such circumstances must be considered sufficient to determine in the first instance the tribunal by which the case should be tried, provided of course there be no reason to impugn the truth of it, on which point the magistrate would be competent to make such enquiries as he might think proper and proceed accordingly.

3. The Court also concur with the Calcutta Court in the opinions expressed in the third and fourth paragraphs of your letter under acknowledgment, on the other points involved in the reference from the session judge of Bhaugulpore.

From the Commissioner of Circuit for the 11th Division to the Register of the Presidency Court af Sudder Nizamut Adawlut, dated 13th July, 1836.

No. 1031.
1825.
Reg. IV. Sec. 4.

I request you will obtain and communicate to me the Court's opinion on the following point. Are orders passed by a magistrate under the provisions of Section 4, Regulation IV. of 1825, open to the revision of a session judge (who has been vested with powers to receive and try appeals from the magistrate in criminal cases under Act VII. of 1835) at all times, or merely when that officer is engaged in holding a jail delivery? And should a person be desirous of appealing at any other time from the order of a magistrate in such a case, to whom is the appeal to be made, to the session judge or to the commissioner?

2. The question may be said to resolve itself into this,—can the Act which in the opinion of the magistrate calls for the necessity of taking moochulkas or penal recognizances for the maintenance of the peace, be considered a criminal one, when no positive offence has been committed, and when the moochulka is taken expressly as a precautionary measure, to prevent, if possible, an expected breach of the peace.

3. As the session judge is clearly competent to receive appeals from the orders of the magistrate in such cases when engaged in holding a jail delivery, and as jail deliveries are now held monthly, I would certainly recommend that such appeals be made in all cases and at all times to the session judge.

To the Commissioner of Circuit for the 11th Division.

The Court are of opinion that appeals lie to the session judges from orders passed by the magistrate under the provisions of Section 4, Regulation IV. 1825, provided the order be passed in a regular criminal trial:—and that such appeals can be received at all times, whether the judge be sitting in the sessions court or not. But the orders passed on the report of a police darogha or in any other miscellaneous proceeding are appealable, as heretofore, to the commissioner of circuit.*

The Western Court, on the 26th August, 1836, *concurred in this construction.—Issued 9th September,* 1836.

August 5th, 1836.

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* Altered by Act XXV. 1837.

To the Register of the Sudder Dewanny Adawlut for the Western Provinces, dated 12th August, 1836.

No. 1032.
Demand of security from pauper appellants to the queen in council.

I am directed by the Court to acknowledge the receipt of your letter of the 22d ultimo, No. 680, and in reply to inform you that the Court concur in the rule of practice proposed to be adopted by the judges of the Western Court, viz. that persons wishing to appeal to the king in council *in formâ pauperis* shall be required equally with other appellants, to furnish security (malzamincc) to the extent of five thousand sicca rupees, to cover the original costs of appeal; and in a further sum of five thousand sicca rupees to reimburse the Honorable the Court of Directors any expenses to which they may be put in the event of their being called upon, under the provisions of Section 22, 3 and 4 William IV. Cap. 41, to conduct the appeal on the part of the party.

August 12*th*, 1836.

From the Commissioner of Circuit 11*th Division to the Register of the Presidency Court of Nizamut Adawlut, dated* 21*st May,* 1836.

No. 1033.
1835.
Act VII.

The trials of appeals from the orders of the magistrates in criminal cases having been transferred to the session judges, I request you will obtain for me the opinion and orders of the Court of Nizamut Adawlut on the following point:

2. The judge in his civil capacity makes a person over to the magistrate, who convicts and punishes him. The session judge declines receiving an appeal from the magistrate's order, on the ground that he is a party concerned, and refers the appellant to the commissioner. What is to be done in such a case?

3. I beg to enclose copy of a rooboocarry from Mr. Morris, the session judge of Patna, referring a case of this sort to me. It would appear, that in his civil capacity he had handed over some persons to the magistrate for forcible resistance to a process issued from his court—an appeal is preferred against the order passed by the magistrate. It appears to me that the session judge is right in declining to entertain it, at the same time that I feel I am not at liberty to do so without the special sanction of the Court.

To the Commissioner of Circuit for the 11*th Division, dated* 12*th August,* 1836.

I am directed by the Court to inform you that as the order of the magistrate was passed on a regular criminal trial, the appeal must, under the existing law, be heard by the session judge.

2. I am further directed to add, for the information of the judge of Patna, to whom you are requested to forward a copy of this letter, that he should himself dispose of all common cases of resistance of civil process, under Section 25, Regulation IV. 1793; and that he should make over to the magistrate those cases only which may have been attended with acts of violence amounting to a breach of the peace.

The Western Court concurred.

August 12*th*, 1836.

From the Session Judge of Zillah Behar to the Register of the Presidency Court of Sudder Nizamut Adawlut, dated 18*th July*, 1836.

No. 1034.
Rule regarding prisoners tried under false names, but whose real names were discovered before completion of trial.

Having just concluded a trial, in which two persons, named "Bundhoo," son of "Kesree," and "Bechun," son of "Choolhun," are charged with burglary and theft on one count, and with having stolen property in their possession knowing it to be such, on a second count, have been tried, it appears on examining the witnesses for the defence, that the prisoners have, from their first apprehension, changed not only their own, but their fathers' names, "Bundhoo's" real name being "Bechoo" and his father's name "Ungnoo," and "Bechun's" real name being "Poonnai" and his father's name "Hurdut." I beg to be informed how I am to proceed with the case, as it is the first that I ever met with of the nature.

2. Neither the prosecutor nor his witnesses have had any previous acquaintance with the prisoners, and have called them by the names they have given themselves, and which now turn out to be false. This discovery would not have been made, but for the witnesses for the defence being asked, as the first question, if they recognized and were acquainted with the prisoners; they answered in the affirmative, and gave them the names which the prisoners now acknowledge to be theirs, and which they concealed from first to last. Their motive for this concealment appears to be that they were implicated in a case of affray attended with beating, and they have been endeavouring to conceal their real names for fear of being detected and tried in that prosecution.

3. I have refrained from taking the futwah of the law officer of this court, in this (to me novel) case. I never heard of a similar one before, and must await the orders of the Court, as to whether the proceedings are to remain as they are, and have the real names of prisoners inserted where necessary, or if they must be re-committed for trial, and the whole case be re-tried by this court to the inconvenience of the prosecutor and witnesses who must be sent for again to give evidence.

To the Session Judge of Zillah Behar.

I am directed by the Court to inform you, in reply to your letter of the 18th July last, that they do not deem any thing further necessary in the case of Bundhoo and Bechun, than that, after completing the trial in the usual manner, you should designate the prisoners in your warrant by the names under which they were respectively arraigned and pleaded, adding their since discovered real names by an *alias* thus—

Bundhoo *alias* Bechoo, Bechun *alias* Poonnai.

The Western Court, on the 2*d September*, 1836, *concurred in this construction.—Issued* 16*th September*, 1836.

August 12*th*, 1836.

No. 1035.
An European defendant in a civil suit filing his pleadings

The Calcutta Court held on a reference from the agent to the Governor General in Hazareebaugh, that an European defendant filing his pleadings and petitions in the

and petitions in the vernacular language may add English translations on unstampt paper.

Persian or vernacular language on the prescribed stamp may be permitted to add translations thereof in English on unstampt paper; and that all processes issued to him should be written in the ordinary language of the court and in English.

2. They further held that it is no part of the duty of the court to furnish the defendant with translations, but that he should procure a person duly qualified to interpret for him.

The Western Court concurred.—Letter to Agent to Governor General issued 16th September, 1836.

August 12th, 1836.

Deposition of an European witness must be recorded in English.

The Calcutta Court, with the concurrence of the Western Court, subsequently held, on the 27th January, 1837, that the deposition of an European witness must be recorded in English, and a Persian translation made by the principal assistant himself, and annexed thereto.

To the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 12th August, 1836.

No. 1036.

1793.
Reg. III. Sec. 14.
1803.
Reg. II. Sec. 18, Cl. 3.

* Roobakaree of Mr. H Shakespear, dated 18th March, 1834.
Ditto of Mr. R. H. Rattray, dated 16th April, 1834.
Ditto of Mr. W. Braddon, dated 17th June, 1834.
Ditto of Mr. T. C. Robertson, dated 17th December, 1834.
Ditto of Mr. G. Stockwell, dated 6th January, 1835
Ditto of Mr. D. C. Smyth, dated 6th August, 1835
Ditto of Mr. C. R. Barwell, dated 6th January, 1836
Ditto of Mr. N. J. Halhed, dated 22d June, 1836.

I am directed by the Court to request that you will favor me with the opinion of the judges of the Sudder Dewanny Adawlut for the Western Provinces on the following question.

2. A petitioner's estate was sold in 1803; objecting to the sale but not obtaining redress from the revenue authorities, he presented a petition in 1807 to the Provincial Court, by whom he was directed to apply to the Revenue Board. Ten years after, in 1817, he did apply to the Board, who, on the 17th February, 1818, referred him to the civil court. On the 5th December, 1829, (viz. after a lapse of eleven years and nearly ten months,) he instituted his suit in the zillah of Behar. The zillah judge dismissed the suit as barred by the rule of limitations and this Court confirmed the dismissal. Can the petitioner be considered to have saved his right of action by suing within twelve years from the date on which he was referred by the Board of Revenue to the civil court; or must the period within which he was bound to institute his suit, be reckoned from the date of the order of the Provincial Court referring him to the Board?

3. Copies of roobakarees recorded by the Court on the dates noted in the margin* accompany this letter.

From the Officiating Register of the Sudder Dewanny Adawlut, Western Provinces, to the Register of the Presidency Court, dated 9th September, 1836.

* Oomrao Singh *versus* Government, Jhumun Singh and others.

I am directed by the Court to acknowledge the receipt of your letter, No. 1894, under date the 12th ultimo, with its Persian enclosures in the case cited in the margin.*

2. In reply, I am directed to acquaint you that the Court at large concur in opinion with the majority of the Calcutta Court that the cognizance of the claim, involved in the suit in question, is barred under the general rule of limitations.

From the Officiating Judge of Zillah Sarun to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 14th July, 1836.

No. 1037.

Competency of a principal sudder ameen to pass orders in regard to costs incurred in the Sudder Dewanny Adawlut, in a case ordered for re-investigation.

I will thank you to obtain the opinion of the Court of Sudder Dewanny Adawlut on the point mooted in the accompanying letter from Mr. D. DaCosta, the additional principal sudder ameen of this district. I conclude that the principal sudder ameen's decree will carry with it all costs, but as I am in ignorance of any specific rule of practice on the subject, I wish to be guided by the instruction of the superior Court.

From the Second Principal Sudder Ameen of Zillah Sarun to the Officiating Judge of Sarun, dated 13th July, 1836.

Previously to adjudging costs in the suit of Baboo Gunput Narain Sing *versus* Soodist Narain Sing, I beg to solicit your opinion and orders for my guidance, as I am unacquainted with any rule or regulation which applies to the point under reference.

2. Baboo Gunput Narain's case was originally tried by the register of this zillah and by him dismissed; this decision in appeal was upheld by the judge, and subsequently by the Provincial Court at Patna. As a last resort Baboo Gunput Narain appealed to the Sudder, where for reasons specified in their roobukary dated the 25th July, 1835, the orders of the several courts mentioned above, were reversed, and the former judge of this zillah was directed to transfer the cause for re-investigation, as an original suit, to one of the principal sudder ameens under him, with instructions to confirm the award of the arbitrator, tendered by the plaintiff, should it be just and equitable, otherwise to try it anew. The case came on yesterday, and as the award in my opinion was open to no impeachment, I decreed it in Baboo Gunput Narain's favor.

3. The question therefore is, whether in addition to present costs of the suit, I can adjudge him those incurred in the superior courts, no order either for or against this having been passed in the roobukary of the Sudder.

To the Officiating Judge of Zillah Sarun.

The Court are of opinion that the principal sudder ameen is fully competent in the case of Baboo Gunput Narain Singh *versus* Soodist Narain Singh, to adjudge the costs of all the courts in such manner as may appear just; his order being of course open to an appeal to your court.*

The Western Court, on the 2d September, 1836, *concurred in this construction.—Issued 7th October,* 1836.

August 12th, 1836.

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* See Circular Order No. 191, Vol. II., 4th November, 1836.

From the Assistant in charge of the Office of Judge of Cuttack to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 11th July, 1836.

No. 1038.

C. O. Vol II. No. 131, February 6th, 1835—duties of assistants in charge of the office of civil judge.

Under the orders contained in the Court's circular, No. 2638, of the 6th November, 1835, moonsiffs are directed to carry their decrees into execution—unless an order be issued by the appellate court for staying the same. As officer in charge of the judge's office I have no authority to sanction appeals, and there are now sixty-eight petitions of appeal presented awaiting the arrival of a judge. In the mean time the moonsiffs and sudder ameens are executing their decrees, and in many cases selling the property of an appellant. Under these circumstances I have stayed the sale of all appellants' property pending the arrival of the judge, and should I be in error request directions may be issued by the Court for my future guidance.

To the Register of the Western Provinces, dated 19th August, 1836.

I am directed by the Court to request you will lay before the judges of the Court of Sudder Dewanny Adawlut for the Agra presidency, the accompanying copy of a letter from Mr. E. Repton, assistant in charge of the office of judge of Cuttack, dated the 11th July last.

2. The Court propose, with the concurrence of the judges of the Western Court, to inform Mr. Repton that it was competent to him, under the concluding words of the first paragraph of the rules for defining the duties of assistants in charge, circulated on the 6th February, 1835,* to cause the execution of the decrees from which appeals had been preferred, to be stayed; taking the usual security from the party against whom the decree was given, if necessary.

* Such assistants or "other officer shall "confine himself to "the exercise of such "part of the powers "of judge as may be "indispensably ne-"cessary for the im-"mediate execution "of processes, &c. "&c or for such other "cases of emergency "as will not admit of "delay."

The Western Court, on the 16th September, 1836, concurred in this construction.

August 19th, 1836.

From the Officiating Judge of Zillah Shahabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 19th July, 1836.

No. 1039.

1827.
Reg. V. Secs. 3 and 4.

I have the honor to request the opinion of the Court of Sudder Dewanny Adawlut respecting the applicability of Sections 3 and 4, Regulation V. 1827, to estates exempted from the payment of revenue.

2. A person obtained many years ago a decree for two anna share of thirteen lakheraj villages; owing to obstacles thrown by the other party in the way of a full enforcement of the decree, the decree-holder has not yet been able to obtain possession; quarrels, &c. have been frequent: I wish to be informed whether I can appoint a manager to make the collections and provide for the management of the estate till the matter has been definitively settled, and if a division be ordered, whether the court is to carry it into effect or to issue a precept to the collector.

To the Officiating Judge of Zillah Shahabad.

The Court are of opinion that as the terms used in the preamble of Regulation V. 1827, are general, they include rent-free land as well as land paying revenue to Government, and therefore whenever it is necessary to cause such lands to be attached, it must be done by the issue of a precept to the collector.

The Western Court, on the 16*th September*, 1836, *concurred in this construction.—Issued* 30*th September*, 1836.

August 19*th*, 1836.

From the Acting Judge of Zillah Chittagong to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 13*th May*, 1836.

No. 1040.

Suits for inheritance should include the whole claim arising out of the same cause of action.

I beg leave to submit, for the consideration and orders of the Sudder Dewanny Adawlut, the copy of a letter dated the 6th instant, received from Mr. G. Doucett, principal sudder ameen, and copies of the petitions, &c. of plaint the subject of the reference.

2. The point involves one of practice which does not appear to me ever to have been duly determined, viz. in a claim of inheritance whether or no an heir may bring to issue his claim to hereditary right in any one zemindaree or talook or landed estate, reserving to himself the power of subsequently suing for the portion of any other estate, and whether in pursuit of claims of inheritance heirs are bound to bring forward their whole claim for both the real and personal effects, or whether they may sue in the first instance for either one or the other.

To the Officiating Judge of Zillah Chittagong, dated 5*th August*, 1836.

I am directed by the Court to communicate to you their opinions that suits founded on the right of inheritance should include the whole claim arising out of the same cause of action.

The Western Court concurred.

August 5*th*, 1836.

No. 1041.

1824.
Reg. X.
1829.
Reg. I. Sec. 7.

The Western Court held on a reference from the officiating session judge of Agra that a "statement given by the prisoner on oath before the magistrate under the conditional offer of a pardon tendered to him agreeably to the provisions of Regulation X. of 1824, as modified by Section 7, Regulation I. of 1829," cannot be received as evidence against him in the event of his being committed to take his trial for the original offence before the court of circuit under the orders of the session judge, on the ground of his having failed to fulfil the conditions under which the pardon was tendered to him.

The Presidency Court, on the 16*th September*, 1836, *concurred in this construction.*

August 5*th*, 1836.

From the Officiating Judge of Zillah Dacca to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 19th July, 1836.

No. 1042.
1793.
Reg. XXXIX.

I request you will have the kindness to obtain for me the instructions of the Court of Sudder Dewanny Adawlut on the following points:

1*st.* Whether a pergunnah cazee can sue for the amount of his fees for the performance of ceremonies?

2*nd.* If he can do so, though he may not have performed them, the parties having employed some one else to perform the duty?

3*rd.* Whether the zillah court should take any steps to give them possession of their pergunnahs?

2. My reasons for applying are, that on perusal of Regulation XXXIX. Section 8, 1793, it would appear they are only entitled to such fees as the parties choose to give, and that consequently they could not bring an action for fees; again I have been frequently applied to by the cazees, stating that certain villagers or ryots of certain talookdars, would not employ them, but got the ceremonies performed by others; I therefore wish to know if I should take any steps in the case, such as requiring mochulkas from the parties.

3. I am inclined to think that the cazees are appointed that the services of a duly qualified individual may be available to the inhabitants; but that they may if they think proper employ any one else, though the act performed by that person may not be valid in law.

To the Officiating Judge of Zillah Dacca.

I am directed to communicate to you the following replies to the questions contained in your letter of the 19th July, No. 364.

2. 1*st and* 2*nd Questions.*—A pergunnah cazee may sue to recover what he may consider himself entitled to, for fees of office; but it rests with the court to determine the extent to which such claim should be admitted and it must be remembered that the payment of fees is entirely voluntary (see Section 8, Regulation XXXIX. 1793.)

3. 3*rd Question.*—The zillah court cannot summarily interfere to put a cazee in possession of his pergunnahs, unless a decree expressly sanctions such a proceeding.

4. With reference to your third paragraph I am directed to observe that for all offices analogous to those which, under English courts, are included in the ecclesiastical department, such as the celebration of marriages and the performance of religious duties or ceremonies, the acts of any cazee, though not specially empowered for the immediate locality, would be valid and lawful; but that the drawing up and attestation of papers and making a record of them must be performed (to be legal) by the cazee of the jurisdiction in which the property specified may be situated.

The Western Court, on the 9th September, 1836, *concurred in this construction.—Issued* 30*th September,* 1836.

August 19*th,* 1836.

From the Commissioner of Dehli to the Officiating Register of the Sudder Nizamut Adawlut, dated 23d July, 1836.

No. 1043.
Jurisdiction in regard to a case of kidnapping a child in a foreign country but retaining it within the limits of the Company's territories.

I have the honor to submit, for the consideration and orders of the Nizamut Adawlut, the annexed copy of a letter, No. 101, from the officiating magistrate of the Hurriana division of this territory, under date the 21st instant, relative to a doubtful point of jurisdiction.

2. An inhabitant of Lahore, about five years ago, carried away a male child without the knowledge of the parents, subjects of the same state. He subsequently settled in the British dominions, and is now accused by the parents and found guilty of the crime.

3. The offence cannot, I presume, be punished by our courts, for the act of child-stealing was committed in a foreign territory, and as the child was not purchased and no proof exists of any intent to dispose of the boy unlawfully, the provisions of Regulations X. of 1811 and III. of 1832, do not appear applicable to the case.

4. The object of this reference is to ascertain, whether in the opinion of the Sudder Court, a commitment to the court of circuit on the minor charge of "retaining in his possession a child, knowing him to have been stolen," would be legal.

The question put in the concluding paragraph of the above letter was answered in the affirmative agreeably to the concurrent opinion of both Courts; Calcutta Court, 2d September, 1836,— *Western Court, 30th September,* 1836.

To the Officiating Session Judge of Agra.

No. 1044.
1810.
Reg. XX. Sec. 18.

The Court have again had before them your letter, No. 69, under date the 1st instant with its enclosures, requesting their opinion whether in cases of the nature of those referred to in Section 18, Regulation XX. 1810, a commanding officer is authorized and enjoined to take the informations of the prosecutor and witnesses on oath.

2. In reply, I am directed to inform you that with reference to the terms of the Section of the Regulation above cited, which give no authority to administer an oath, but merely require that in such cases the offender, if found within the limits of the cantonment, shall be arrested by the commanding officer and delivered over to the magistrate, the Court are of opinion that the commanding officer is not competent to examine the prosecutor and witnesses on oath.

The Presidency Court, on the 14th October, 1836, *concurred in this construction.*

September 9th, 1836.

From the Session Judge of Zillah Rajeshahye to the Register of the Presidency Court of Nizamut Adawlut, dated 5th August, 1836.

No. 1045.
1817.
Reg. XVII. Sec. 5.

I have the honor to acknowledge the Court's orders in the case of Bissoo Momin charged with murder of Attoo Bewah, and to report the due execution of the same. As however the fourth paragraph of the letter lays down a rule which appears to me to involve

a question of law, and will form a precedent in all future cases of a similar nature, I hope I may be excused if I solicit the Superior Court's expression of their sentiments to clear up my doubts on the particular point under reference.

2. I accordingly beg to submit the following question to the Court:—Is it within the competence of a session judge, without reference to the Nizamut Adawlut under Section 5, Regulation XVII. of 1817, to award punishment in a case, in which the conviction of the prisoner exclusively or principally depends on the deposition of witnesses objected to by the law officer, solely on the ground of exception set forth in the Mahomedan rules of evidence, which evidence he declares however to be good if no such legal exception exist, the session judge considering the objection raised to be unreasonable and insufficient, and the evidence good in all respects.

Extract from a Letter addressed by the Register of the Presidency Court to the Register of the Nizamut Adawlut, Western Provinces, dated 9th September, 1836.

The majority of the Court are of opinion that as the conviction of the prisoner rested principally on the evidence of the two females, whose testimony was held by the law officer not to be valid ground for such a verdict, it was incumbent on the session judge, under the Section cited, to refer the case for the Court's orders.

The Western Court, on the 23d September, 1836, *concurred in this construction.*

September 9th, 1836.

To the Judge of Zillah Mymensingh, dated 16th September, 1836.

No. 1046.
1829.
Reg. X Schedule B. Article 8.
1814.
Reg. XXVI. Sec. 7,

I am directed by the Court to forward the following reply to your letter of the 4th July, No. 96.

2. The question submitted appears to the Court to be, in what manner the amount of cause of action is to be computed and settled when disputes on this particular point arise between the parties.

3. In reply, I am directed to refer you to Article 8, Schedule B, Regulation X. 1829, and to observe that the objections of the defendant to the plaintiff's valuation should generally be brought forward in his answer to the plaint, when the presiding judge, after such summary enquiry as may appear necessary, may permit the plaintiff, should the value be underrated, and without apparent fraudulent intent, to file a supplementary plaint agreeably to the provisions of Section 7, Regulation XXVI. of 1814. This decision will be liable to alteration or reversal by the court having appellate jurisdiction, either summarily or on a regular appeal. Cases may also arise in which, though the defendant have not objected to the plaintiff's valuation of the property in the court of primary jurisdiction, it would be the obvious duty of the court trying the appeal to notice and rectify the same.

The Western Court, on the 2d September, 1836, *concurred in this construction.*

September 16th, 1836.

From the Officiating Judge of Zillah Shahabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 29th August, 1836.

No. 1047.

1829.
Reg. X.
Schedule B. Article 8.
Valuation of property in suits of pre-emption.

I have the honor to request the opinion of the Court of Sudder Dewanny Adawlut respecting the amount or value to be inserted in the plaint in cases of pre-emption, whether in cases of malgoozaree land it is to be laid at thrice the sudder jumma, at the amount inserted in the deed of transfer between buyer and seller, or at the aggregate of both? I am obliged to make the reference as precedents of the superior Court are to be found for all three in this office, and there being no appeal from the zillah orders in the cases I have in view in making this reference, I am anxious to avoid falling into error.

To the Judge of Zillah Shahabad.

The Court are of opinion that, if the land, the right of pre-emption of which is claimed, be land paying revenue to Government either as an entire muhal, or a specific portion thereof with a defined jumma, the cause of action must be estimated at three times the amount of the sudder jumma, as prescribed by Article 8, Schedule B, Regulation X. of 1829; if lakheraje, at eighteen times the amount of the computed annual rent; and if it be land paying revenue to Government, but neither an entire muhal nor a specific portion with a defined jumma, at the estimated selling price.

The Western Court, on the 14*th October,* 1836, *concurred in this construction.—Issued* 28*th October,* 1836.

September 23*d,* 1836.

Extract of a Letter from the Judge of City Patna to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 30*th August,* 1836.

No. 1048.

A zillah judge incompetent to set aside a decision of a subordinate tribunal, in the absence of an appeal, notwithstanding such decision may appear to him irregular or illegal.

Para. 1. I beg to be informed whether it is within the competency of a judge to set aside a decision passed by any of the inferior judicial authorities in a regular suit, when any irregularity or illegality in their proceedings may be brought to his notice by either party, or may transpire incidentally in the course of executing the decree, or in any other miscellaneous proceedings held subsequently thereto.

To the Judge of City Patna.

I am directed to inform you that you are not competent summarily to cancel the decisions of inferior tribunals on the ground of illegality or irregularity, but that you should direct the parties interested to appeal therefrom even although the prescribed period for such appeals should have elapsed.

The Western Court, on the 21*st October,* 1836, *concurred in this construction.—Issued* 4*th November,* 1836.

September 30*th,* 1836.

To the Officiating Commissioner of Circuit, 2d Division.

No. 1049.
1806
Reg XI. Sec. 3.

The Court have had before them your letter and its enclosures, No. 295, under date the 6th instant, respecting the provision of carriage for troops on the line of march and when otherwise required for the public service.

2. The following would appear to be the points on which you are desirous of obtaining the opinion of the Court:

First. Whether the latter part of Clause 1, Section 3, Regulation XI. of 1806 is to be considered as superseded by Regulation VI. of 1825;

Secondly. What description of carriage may be seized for the use of troops on the line of march; and

Thirdly. Whether in cases of emergency the officers of Government may seize carriage for the transport of rum or other supplies required for military purposes, or impress men for the department of public works.

3. In reply to your first question I am directed to communicate to you the opinion of the Court that the latter part of Clause 1, Section 3, Regulation XI. of 1806, has not been superseded by Regulation VI. of 1825, which, as observed by you, merely confers additional powers on the revenue authorities, leaving the provisions of the former enactment in regard to the assistance which the police officers are required to render when applied to in such cases, exactly as they were.

4. With respect to your second question I am directed to state, that as the authority vested in the public officers of Government by Clause 1, Section 3, Regulation XI. of 1806, for providing carriage for the use of troops in the line of march, is of a general nature, while the restrictions contained in Section 8 of that Regulation apply only to officers not commanding nor proceeding with a corps or detachment of troops, or any other person travelling within any part of the Company's territories either on the public service or his private affairs, the Court are of opinion that, under the provisions of the Clause of the Section first quoted, every description of carriage of the nature therein referred to, whether kept for *private use* or for hire, is liable to be seized for the purpose above mentioned, with the exception to begaries, coolies, &c. the compulsory exaction of whose services is expressly prohibited by Regulation III. of 1820.

5. On your third question I am desired to communicate to you the opinion of the Court in the negative on both points involved therein, provided of course, as regards the former, that the supplies alluded to are not proceeding with a body of troops and required for their use on the line of march.

September 30th, 1836.

To the Register of the Nizamut Adawlut, Western Provinces, dated 11th November, 1836.

I am directed by the Presidency Court to acknowledge the receipt of your letter of the 30th September last, No. 865, enclosing copies of letter from the officiating commissioner of circuit for the 2d division, under date the 6th September, No. 295, and of a reply to the same which the Western Court propose to transmit with the concurrence of this Court.

2. In reply, I am directed to state that the Court entirely concur in the construction which the Western Court propose to adopt in answer to the first and third questions which arise out of the officiating commissioner's letter. As to the second answer the Court concur in regard to the liability of carriage kept for private use to seizure for the public service; but they would have it distinctly understood that carriage kept for hire should be invariably taken in the first instance, while that kept for private use should only be pressed on very emergent occasions.

From the Judge of Zillah Rajshahye to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 30th June, 1836.

No. 1050.

Sale of property by moonsiffs in execution of decrees.

It having been brought to my notice, that the practice of executing decrees for small amount, by sale of personal property through the moonsiffs, is attended with considerable inconvenience to the courts, by obliging those officers to absent themselves from their sudder station (for many days on some occasions), thereby putting a stop to business of greater importance, and at the same time forcing them to incur an expense which the trifling fee of one anna in the rupee cannot possibly repay, I beg to submit the expediency of allowing the moonsiffs to entertain, each, an individual on their establishment, whose name shall be registered and for whose conduct the nominating officer shall be held responsible, to preside at sales of real property to the amount of one hundred rupees; such individual to receive the commission hitherto drawn by the moonsiff under Regulation XXIII. 1814.

To the Judge of Zillah Rajshahye, dated 30th September, 1836.

I am directed by the Court to inform you that if in your letter of the 30th June last, No. 34, you allude to decrees passed at the sudder station, the difficulty alluded to by you might be surmounted by entrusting the duty of selling property, &c. to the nazir, his naib, or any other officer nominated by you for that purpose: and that if you allude to decrees passed by the moonsiffs themselves, they may depute any officer on their own establishment to sell the property of a debtor.

2. In cases however in which the moonsiffs may have been directed by the judge, or other superior officer, to perform this duty, the Court are of opinion that they cannot properly delegate it to another.*

The Western Court, on the 2d September, 1836, *concurred in this construction.*

September 30th, 1836.

To the Secretary to the Government of Bengal in the Judicial Department, dated 16th September, 1836.

No. 1051.

1836.
Act XI.
† Not printed.

I am directed by the Court to request that you will lay before the Right Hon'ble the Governor of Bengal the accompanying copy† of a letter from the Register of the Sudder Dewanny Adawlut for the Western Provinces, dated the 17th June last,

* The above reference led to the circular order of the 13th January, 1837.

No. 492, and to solicit the favor of your informing me whether it was intended by the provisions of Act XI. of 1836, to render magistrates and other judicial functionaries liable to civil actions in the courts specified in the Act, for damages on account of alleged injuries committed in their official capacity.

2. The majority of the Court hold it to have been intended to extend the jurisdiction of the native courts specified in the Act, over certain classes not previously amenable to their authorities, without altering or adding in any way to the subjects or matters originally within their legal cognizance; and consequently that suits of this nature will not lie against any public officers not rendered specially amenable to the courts. On the other hand it is contended that civil actions for damages against official persons, not being excluded by the Act from the cognizance of the native courts specified, and the individuals themselves being unreservedly made amenable to their jurisdiction, no legal ground could be assigned for the non-admission of such suits.

From the Secretary to the Government of Bengal in the Judicial Department to the Register of the Sudder Dewanny Adawlut at the Presidency, dated 25th October, 1836.

In compliance with the request conveyed by your letter dated the 16th ultimo, and its enclosures, I am directed by the Right Hon'ble the Governor of Bengal to transmit, for the information of the Court of this Presidency and that of the North Western Provinces, the accompanying copy of a letter from the Secretary to the Government of India, under date the 10th instant, regarding the construction of Act XI. of 1836.

To the Secretary to the Government of Bengal.

I am directed by the Right Hon'ble the Governor General in Council to acknowledge the receipt of your letter dated the 27th ultimo, with its enclosed reference from the Register to the Court of Sudder Dewanny Adawlut, as to the intent and meaning of Act XI. of 1836.

2. In reply, I am desired to request that that Court may be apprised that the Act in question, in providing that no person shall by reason of place of birth or by reason of descent be exempted from the jurisdiction of certain courts, does not take away any exemption to which any person may be entitled by virtue of his office, and consequently that judicial functionaries who were not liable to civil actions in the courts specified in the Act for damages on account of alleged injuries committed in their official capacity before the passing of the Act, will not be liable now.

Council Chamber, 10th October, 1836.

From the Officiating Judge of Zillah Ghazeepore to the Officiating Register of the Sudder Dewanny Adawlut, Western Provinces, dated 5th October, 1836.

No. 1052.
1814.
Reg. XXVII. Sec 31.

With reference to the sentence underlined in the following extract, Section 31, Regulation XXVII. 1814, may I beg the favor of your obtaining the orders of the Court as to whether the filing of the juwab-dewaee only in a suit, without the completion of the

other requisite pleadings, is sufficient to entitle the respective pleaders to have the regular fees, or whether, under the precise wording of the English version, all the requisite pleadings must be filed before the pleaders can be entitled to half the fees.

Extract.—" If a suit shall be withdrawn or dismissed on default, *after all the requisite* " *pleadings shall have been filed in court*, the respective pleaders are to be entitled to one " half the fees which they would have received if judgment had been given in the cause."

To the Officiating Judge of Zillah Ghazeepore, dated 14*th October*, 1836.

The Court are of opinion that to entitle the respective pleaders of the parties in cases withdrawn or dismissed on default to one half the amount of the established fee, under the provisions of Section 31, Regulation XXVII. of 1814, it is necessary that the whole of the requisite pleadings should have been filed, and not merely the answer or juwab-dawee.

The Presidency Court, on the 11*th November*, 1836, *concurred in this construction.*

October 14*th*, 1836.

To the Commissioner of Circuit for the 18*th Division.*

No. 1053.
1819.
Reg. VII. Sec. 6.

The Court are of opinion that in the event of parties, against whom an award for arrears of wages to domestics passed under the provisions of Section 6, Regulation VII. 1819, may be given, not immediately paying the same, the magistrate should proceed to levy the amount by the distress and sale of the defendants' personal property.

The Western Court, on the 4*th November*, 1836, *concurred in this construction.—Issued* 18*th November*, 1836.

October 14*th*, 1836.

No. 1054.
1831.
Reg. V. Sec. 5.

On a reference from the judge of Beerbhoom, it was held by the two Sudder Courts concurrently, that Section 5, Regulation V. 1831, does not restrict moonsiffs from taking cognizance of claims to lakhiraj lands attached in execution of their own decrees.

Calcutta Court, 14*th October*, 1836; *Western Court*, 4*th November*, 1836.

From the Officiating Register of the Western Provinces to the Register of the Presideney Court of Sudder Dewanny Adawlut, dated 17*th October*, 1836.

No. 1055.
1831.
Reg. V. Sec. 28.

A question having arisen as to whether an appeal lies to the Court of Sudder Dewanny Adawlut from an original order, passed by a zillah or city judge in a matter connected with the execution of a decree of his court, confirming or reversing in appeal the decision of a sudder ameen or moonsiff, I am directed to request that you will submit the point for the consideration and opinion of the Calcutta Court.

2. In the case which gave rise to the present reference the judge, in affirming the decision of a moonsiff, omitted to provide in his decree for the payment of interest on the sum adjudged, and on the decree-holder subsequently applying to him, under the rule contained in the circular order of the 11th September, 1829, to have this omission supplied, he rejected his application; from this order the decree-holder has appealed to the Court, and the question now is whether his appeal can be entertained. The Court are of opinion that as the order objected to originated with the judge, and was not passed in appeal from an order of the lower court, they are competent to receive an appeal from it and either to reverse the judge's decision and direct the payment of interest to the party in whose favor the decree was passed, or to desire the judge to revise his decision and to pass a modified order in conformity to the circular order above cited. Previously however to adopting either of these measures they are desirous of learning the practice of the Calcutta Court in cases of this nature as well as their opinion upon the general question.

3. The Court are aware of the resolution adopted by the Calcutta Court under date the 13th December, 1833, in the case of Mihr Ban Sing and another, but they observe that the rule therein laid down is applicable only to interlocutory orders passed by the zillah and city judges in the hearing of appeals in which their decision may be final, as in the case referred to, and does not affect the present question.

October 17th, 1836.

To the Officiating Register of the Sudder Dewanny Adawlut, Western Provinces, dated 25th November, 1836.

I am directed by the Court to acknowledge the receipt of your letter of the 17th ultimo, No. 893.

2. In reply, the Court direct me to observe that it was ruled by the resolution of the 18th March last (communicated to you by my letter of the same date No. 632,) that a summary appeal will lie to the Court of Sudder Dewanny Adawlut from the decision of a zillah judge in appeal from the judgment of a sudder ameen or moonsiff, provided it should appear that the sudder ameen or moonsiff had decided a case in which he had no jurisdiction. On the same principle, the Court hold that it is competent to the Court to amend, on a summary appeal, any order which may be obviously illegal or contrary to any positive regulation or circular order, and this principle has been invariably acted upon in this Court for the last two years and a half.

3. In the case out of which this reference arose, the zilllah judge appears to have acted in direct opposition to the circular order of the 11th September, 1829; and the Court are therefore of opinion that the Western Court, provided they are satisfied that there exist no valid grounds for refusing the interest, are competent to direct the judge to award the same, on execution of the decree, without subjecting the party to the expense and delay of a regular suit.

To the Officiating Judge of Dacca, dated 21st October, 1836.

No. 1056.

Distribution of assets among several decree-holders.

I am directed by the Court to inform you that it has been ruled by both Courts of Sudder Dewanny Adawlut that all decrees, under which process of attachment has been issued, provided they are dated previous to distribution, entitle the holders to share in proportion to their claims, (exception being allowed in case of bona fide mortgages,) in preference to the claimants under decrees in which no such process has been issued.

2. The Court therefore direct me to request that you will in the first instance satisfy the demand of Bholanath Misser from the proceeds of the sale of the property of Raja Ram Deo, provided no other decrees exist under which process of attachment had been issued on the date on which you received the application of the judge of Tippera: should any surplus remain you will be pleased to remit it to the judge of Tippera in satisfaction of the demand of Sheo Pershad Sing.

The Western Court concurred in this construction.

October 21st, 1836.

Resolution of the Presidency Court of Sudder Dewanny Adawlut, under date the 11th November, 1836.

No. 1057.

1814.
Reg. XXVI. Sec. 4.

Doubts have been entertained whether in a case in which the Court has rejected an application for a special appeal from the decision of the zillah judge in appeal from the original decision of a principal sudder ameen; or in a case in which the Court, under the power vested in them by Clause 2, Section 2, Regulation IX. 1831, have confirmed the original decision of a zillah judge; the last order of the Sudder Dewanny Adawlut, or the decision of the zillah judge, is to be considered as the judgment which is open to review under the provisions of Section 4, Regulation XXVI. of 1814.

2. The Court are of opinion that as in the first instance no appeal has been admitted from the judgment of the zillah judge, the judge may, under the circumstances stated in Clause 2, Section 4, Regulation XV. 1814, apply for permission to review his decision.

3. When, on the other hand, the Sudder Court has confirmed a decision under the provisions of Clause 2, Section 4, Regulation IX. 1831, the order is to all intents and purposes a judgment, open to review by it (the Sudder Court) only.

The Western Court, on the 25th November, 1836, *concurred in this construction.*

November 11th, 1836.

At a Court of Sudder Dewanny Adawlut for the North Western Provinces, held at Allahabad under date the 18th November, 1836—

No. 1058.

1814.
Reg. XXVI. Sec. 4.

It was resolved, with the concurrence of the Calcutta Court of Sudder Dewanny Adawlut, that documents filed with applications for a review of judgment under the provisions of Section 4, Regulation XXVI. of 1814, should be considered as exhibits, and

made liable, as such, to the rule contained in Article 5, Schedule B, Regulation X. of 1829, in the same manner as if they had been filed or entered on the proceedings of the original suit, or when it was before the Court in appeal, whether regular or special.

The Presidency Court, on the 21*st October*, 1836, *concurred in this construction.*

November 18*th*, 1836.

From the Officiating Judge of Zillah Shahabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 17*th August*, 1836.

No. 1059.

Power of the civil courts summarily to set aside fraudulent leases in executing their decrees.

I have the honor to request the opinion of the Court of Sudder Dewanny Adawlut respecting the construction to be put on Section 4, Regulation XLIV. 1793, and further to be informed on the general practice adopted by the Court with respect to leases sought to be set aside on the transfer of landed property, whether the Court consider the enactment as bearing reference only to bona fide leases, or that it is imperative to uphold all leases entered into between the farmers and former proprietors till the period specified for their expiration.

2. The rule alluded to is taken advantage of in two ways to defeat the ends of justice. 1st. On an action being instituted for right and possession of real property, the defendant who is in possession gives a lease for a long period say twenty or thirty years at a rent just sufficient to pay the sudder jumma. The plaintiff on obtaining his decrees is opposed on taking possession by the farmer and finds that he has got a decree for property, it may be, for the benefit of his posterity, but that he is himself excluded from its enjoyment with every prospect of being so for the term of his life, while the former incumbent, against whom the decree has been given, in collusion with the fictitious lessee is still enjoying the profit of the land to which the decision of the court says he has no right.

3. It is also resorted to by debtors to defraud their creditors. On an action being instituted for the recovery of monies the debtor gives a lease of his property in the manner above noticed: on execution being sued out against his property he laughs at his creditor for he has completely barred its purchase by any other party by the clog he has put upon it. It does not appear to me that such devices can possibly be supported by law, but the wording of the regulation it is hard to get over. As it is, the difficulties encountered in the execution of decrees are manifold; and if this rule is to be construed as applicable to all leases without exception, those difficulties must be increased tenfold.

4. Should it be the opinion of the Court that such fraudulent leases cannot be upheld they are of course to be set aside summarily,—in the first instance mentioned by me, by permitting the decree-holder, in the second, the purchaser to collect from the cultivating tenants.

To the Officiating Judge of Zillah Shahabad, dated 2*d December*, 1836.

I am directed by the Court to inform you that Section 4, Regulation XLIV. 1793 is rescinded by Regulation XVIII. 1812, but that under the circumstances stated by you,

you are authorized in cases of execution of decrees, after holding a summary investigation into the claims of the parties concerned, to quash any lease which may be satisfactorily shewn to be fraudulent, leaving the party dissatisfied with your decision to appeal summarily to this Court, or institute a regular suit to recover possession of their alleged rights.

December 2d, 1836.

Extract of a Letter from the Session Judge of Zillah Bundelkhund to the Officiating Register of the Sudder Nizamut Adawlut, dated 30th November, 1836.

No. 1060.

A magistrate is incompetent to interfere in disputes between parents respecting the guardianship of a child.

Para. 1. I have the honor to submit herewith, for the orders of the Sudder Nizamut Adawlut, copy of a letter from the officiating magistrate of Banda with its enclosure.

Extract of a Letter from the Acting Magistrate of Zillah Banda to the Session Judge of Zillah Bundelkhund, dated 3d November, 1836.

Petition of Musst. Mungree.
Reply to the same by Mr. Pollock.

Para. 1. I have the honor to forward certain papers mentioned in the margin, with a request that you will have the goodness to submit them with a copy of this communication for the orders of the Sudder Nizamut Adawlut.

2. The complainant in the case is a woman of the Hindoo faith, who cohabited with the defendant for five years, by whom she had a female child about two years since, which she claims possession of. The defendant, of the Christian persuasion, it appears, having recently married, has dismissed the complainant with a maintenance of four rupees a month and a house for life, and refuses to resign the guardianship of the child, which is at present in his possession.

To the Session Judge of Zillah Bundelkhund.

Musst. Mungree Petitioner.

The Court having again had before them your letter No. 151, under date the 30th ultimo, with its enclosures, from the acting magistrate of Banda, in the case of the petitioner named in the margin, direct me to acquaint you, for the information and guidance of that officer, that he has no authority to interfere with a view to make over the child in question to the petitioner, who should be referred to the civil court.

The Presidency Court concurred in this construction.

December 9th, 1836.

To the Officiating Register of the Nizamut Adawlut, Western Provinces, dated 9th December, 1836.

No. 1061.

1817.
Reg. XVII. Sec. 10.

I am directed by the Court to request that you will lay before the Court of Nizamut Adawlut for the Western Provinces, the accompanying copy of a letter from the officiating session judge of Cuttack, dated the 3rd ultimo, No. 32.

The Court propose, should the Western Court concur, with reference to the 16th paragraph of the officiating session judge's letter, to inform him that "measurement

papers" must be considered as coming within the denomination of "deeds and papers," the fraudulently publishing as true, or otherwise fraudulently giving or attempting to give effect to which, knowing the same to be false and fabricated, is declared by Section 10, Regulation XVII. of 1817, to subject the offender on conviction to the penalties prescribed by that section for forgery.

The Western Court, on the 23d December, 1836, *concurred in this construction.*

December 9th, 1836.

From the Officiating Judge of Zillah Chittagong to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 23rd November, 1836.

No. 1062.
1806.
Reg. II. Sec. 11.

I beg leave to submit copy of my proceedings of to-day's date, together with copies of a petition and list of property and deposition on oath of the petitioner, a debtor imprisoned under a decree of the Sudder Dewanny Adawlut.

2. The petitioner moves for release under Section 11, Regulation II. 1806, and is not opposed by the holder of the decree; the judgment appertains to and the execution of the decree is under orders of the Sudder Dewanny Adawlut; I doubt my powers to release the petitioner, and therefore submit this reference for the Court's final orders. And for my future guidance in similar cases, I request to know if I can release, as judge of a zillah court, a man confined in execution of a decree of the Sudder Dewanny Adawlut without the special orders of the Sudder.

To the Officiating Judge of Zillah Chittagong.

I am directed to communicate to you the Court's opinion that when the execution of a decree of the Sudder Dewanny Adawlut has been entrusted to the zillah judge, he is competent, without referring the case to the Court, to apply the rule contained in Section 11, Regulation II. 1806, to any defendant who may be confined in execution of the decree.

The Western Court, on the 30th December, 1836, *concurred in this construction.—Issued 27th January,* 1837.

December 16th, 1836.

From the Judge of Zillah Bundlekhund to the Officiating Register of the Western Provinces, dated 17th December, 1836.

No. 1063.
1814.
Reg. XXVIII. Sec. 8.

The practice of this Court has heretofore been to admit the records of hajirzaminee, in pauper cases, on country unstamped paper, but these records not being specified in Section 8, Regulation XXVIII. 1814, as exempted from stamp duties, it appears to me to be irregular, and I have to request the favour of a communication of the orders of the Sudder Dewanny Adawlut on the subject.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 23rd December, 1836.

I am directed by the Court to request that you will submit, for the opinion of the Calcutta Court, the accompanying copy of a letter from the judge of Bundelkhund, under date the 17th instant.

2. There being no exemption in favor of security bonds of the description of those referred to by Mr. Fraser, the Court propose, with the concurrence of the Calcutta Court, to inform him that the practice which obtains in his district of admitting such instruments on plain paper is opposed to the Regulations, and should be discontinued accordingly.

The Presidency Court concurred in this construction.

December 23rd, 1836.

From the Officiating Judge of Zillah Meerut to the Register of the Court of Sudder Dewanny Adawlut for the Western Provinces, dated 28th December, 1836.

No. 1064.
1836.
Act XVII.
Trial of cases instituted in the courts in the territories lately held by the Begum Sumroo.

I have the honor to solicit the instructions of the Sudder Dewanny Adawlut on the following points connected with the investigation of civil suits in the territories which were lately held by the Begum Sumroo.

2. Many of the tumusooks and other description of bonds, agreements, &c. are written on plain paper, and some on common paper, bearing an ink stamp of a certain value from which a revenue was collected by the Begum, but under what regulations these stamps were issued and used, I am not informed. I request to know whether these documents may be received in support of claims, and to submit herewith three of the stampt papers of different value for the inspection of the Court.

3. With reference to Act XVII. of 1836, regarding the administration of justice in the territories of the late Begum, I beg to know whether the unexecuted decrees which were passed previous to the death of the Begum are to be carried into execution by our courts. On one of the stampt papers herewith submitted is written a decree by an officer of the Begum.

4. As there were no usury laws in the Begum's territories, many of the tumusooks and other agreements for the payment of money contain an acknowledgment of payment of interest at the rate of two, three or more rupees per cent per mensem. What is to be determined regarding the payment of interest beyond the legal amount authorized in our territories ?

5. It will doubtless be necessary to ascertain what description of officers were authorized to issue decrees in civil suits in the territories of the late Begum, and also under what processes they were ordered to be used.

To the Officiating Judge of Meerut, dated 6th January, 1837.

The Court having again had before them your letter, No. 199, under date the 28th ultimo, direct me to communicate to you their opinion as follows on the several points

therein referred, connected with the investigation of civil suits which may have originated in the territories held by the late Begum Sumroo.

2. On the first and third points I am desired to inform you, that the provisions of the stamp and usury laws are inapplicable to deeds executed within the territories of the Begum Sumroo prior to the date on which they were annexed to the British dominions; and in the decision, therefore, of cases which may involve claims of the nature of those described in the fourth paragraph of your letter, you must be guided by the laws and usage of the country.

3. With respect to the second point referred by you, the Court direct me to observe that your court must be considered as standing in the place of the local courts which existed under the Begum's government, and that on application being made to you in the prescribed form for the execution of any decrees passed by the Begum's officers prior to her highness's demise, you should proceed to enforce the same under the general rules applicable to the execution of decrees of court, which will of course include an investigation into any objections which the opposite party may have to offer to such awards, on the plea of their not having been passed by a competent tribunal, or on any other ground.

The Presidency Court, on the 27th January, 1837, *concurred in this construction.*

January 6th, 1837.

To the Register of the Court of Nizamut Adawlut, Western Provinces, dated 16th December, 1836.

No. 1065.

A commissioner of circuit has no power to declare any person excluded from future employ in his division.

On the conclusion of an investigation into the conduct of the nazir of the Foujdary Court of a district in the Lower Provinces, the commissioner, considering the nazir, though acquitted of the charges preferred, to be a corrupt officer, directed that he should not be employed in any situation in the offices of the magistrates subordinate to his jurisdiction.

2. The Court are inclined to hold that the commissioner has no power to declare the individual in question perpetually excluded from future employ in his division, although he is of course competent to decline sanctioning his nomination to any responsible situation during the period he may be in charge of the division. As the point is however of importance, they request to be favored with the opinion of the judges of the Western Court on the subject.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Nizamut Adawlut, dated 6th January, 1837.

I am directed to acknowledge the receipt of your letter, No. 2980, under date the 16th ultimo.

2. In reply, I am directed to state that the Court concur in opinion with the Calcutta Court that, in the case which forms the subject of your letter, the commissioner was not

competent to declare the individual referred to disqualified for further employment in his division, and to add that the Court have invariably acted on this principle whenever any cases of the above nature have been brought before them.

January 6th, 1837.

From the Officiating Register, Western Provinces, to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 13th January, 1837.

No. 1066.

Execution of decrees passed by His Majesty in council.

With reference to the orders lately received from the honorable the Court of Directors, forwarding copies of the judgments passed by His Majesty in council in several cases of appeal from the decisions of the Sudder Dewanny Adawlut, I am directed by the Court to request that the Calcutta Court will do them the favor of stating what may be the practice of that Court in regard to the execution of such decisions ; viz. whether it has been usual for the Court to execute the decrees themselves, including the determination of any objections which may arise in the course of the execution, or to forward the decrees to the judges of the districts in which the cause of action arose, with an order generally to carry the same into effect in the same manner and under the same rules as prescribed for the execution of decrees of court, leaving any party, dissatisfied with their proceedings or orders, to appeal therefrom in the usual form.

2. I am further directed to request the opinion of the Calcutta Court as to the competency of the Courts of Sudder Dewanny Adawlut to award wasilaut or interest to the holder of a decree passed by the king in council for money or landed property, where the decree may contain no provision for the payment of the same. The case which has given rise to this question, is that of Lal Dhokul Singh, appellant, versus Lal Rooder Pertaub Singh, respondent, a full report of which is given at page 253, volume I. of the Sudder Dewanny Reports.

3. Under the decree passed in that case by the Court of Appeal at Benares, setting aside the decision of the zillah court which dismissed the claim, the plaintiff obtained possession of the talooka in dispute, and continued to hold it for two years, when he was dispossessed by order of the Sudder Dewanny Adawlut, who reversed the decision of the Benares Court, and directed that the plaintiff should refund the mesne profits for the period of his possession.

4. Lal Dhokul Singh, son and successor of the original plaintiff. being dissatisfied with this decision, appealed from it to the king in council, and a final decree was passed by His Majesty under date the 7th February, 1835, a copy of which is annexed, reversing the decision of the Sudder Dewanny Adawlut and affirming that of the Provincial Court, but without giving any order as to the payment of mesne profits or the costs of the Sudder Court.

5. Adverting, however, to the terms of His Majesty's decision, the Court are of opinion that it must be presumed to be the intention of it that the parties should be placed in precisely the situation in which they would have been but for the decree of the

Sudder Dewanny Adawlut, and that consequently the decree-holder is entitled, upon the principle laid down in the circular order of the 11th September, 1829, to receive from the respondent, without a fresh suit, the amount with interest of the mesne profits refunded by him by order of the Sudder Court, as well as for the whole period of his subsequent dispossession, together with the costs of the appeal to the Sudder Dewanny Adawlut, and that the Court, in the execution of the present decree, are competent to award him the same.

6. Should the Calcutta Court concur in this opinion the Court propose to act upon it in the instance under consideration, as well as in all future cases of a similar nature.

January 13th, 1837.

To the Register of the Court of Sudder Dewanny Adawlut for the Western Provinces, dated 17th February, 1837.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter dated 13th of January last, in which, at the requisition of the Sudder Dewanny Adawlut for the Western Provinces, you solicit information from them regarding their manner of proceeding to execute decrees passed by His Majesty in council, with its enclosures.

2. In reply, I am instructed to state, that it has been usual to forward the decrees in question to the judges of the districts in which the cause of action may have arisen, with an order, generally to carry the same into effect, in the same manner, and under the same rules, as those prescribed for the execution of other decrees of court, leaving any party, dissatisfied with their proceedings or orders, to appeal therefrom in the usual form.

3. I am further directed to state that the Court entirely concur in the opinion expressed in the fifth paragraph of your letter, regarding the adjudication of costs and mesne profits.

No. 1067.
1819.
Reg. II. Sec. 30.

On a reference from the judge of Chittagong, the Courts of Sudder Dewanny Adawlut held that a suit brought by a zemeendar for the rent of lands in which the defendant claims the right of property in virtue of a rent-free grant, is not referrible to the collector under the provisions of Section 30, Regulation II. 1819, but must be considered in the light of a boundary dispute, and disposed of in the ordinary mode by the civil court.

Calcutta Court, 30th December, 1836—*Western Court, 13th January*, 1837.

No. 1068.
1829.
Reg. X. Schedule B.

The sicca rupee to be taken as the standard for estimating the powers of the native judges in the investigation of regular suits, until altered by an Act of the Government.

From the Officiating Judge of Zillah Shahabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 27th December, 1836.

I have the honor to request the opinion of the Court of Sudder Dewanny Adawlut on the following points:

Amount of action in sicca rupees 4,646, company's rupees 5,254: must the plaint be written on paper of 150 or 250 rupees' value?

2. I take this opportunity of requesting the opinion of the Court whether, in calculating the power of moonsiffs and the native judges in the investigation of regular suits, the amount of action cognizable by each is to be calculated in sicca or company's rupees.

To the Officiating Judge of Zillah Shahabad.

I am directed by the Court to inform you that under the circumstances stated in the first query contained in your letter of the 27th December last, No. 412, the plaint must be written on a stamp value 150 rupees, and further that the sicca rupee must be taken as the standard coin for estimating the powers of moonsiffs and other native judges in the investigation of regular suits until altered by some Act of the Government.

The Western Court, on the 3rd February, 1837, *concurred in this construction.—Letter to the Officiating Judge issued 17th February,* 1837.

January 20th, 1837.

From the Officiating Judge of Zillah Chittagong to the Register of the Court of Sudder Dewanny and Nizamut Adawlut, Fort William, dated 14th November, 1836.

No. 1069.
1814.
Reg. XXIII.
Sec. 10, Cl. 2.

I beg leave to transmit the copy of a letter received by me from the commissioner of this division regarding the case of Alleemooddeen, moonsiff of Sittakoond; and for the object of a precedent I submit a reference for the orders of the superior Court.

2. The moonsiff was made over by me to the court of circuit under the following charges:

1*st.* Abstracting from the nuthee of a suit in which Ribbeeah Beebee was plaintiff, a chittee dated 15th Assin, 1195, and an ikrar dated in Sawun, 1185.

2*nd.* Fabricating in the above case a roobukaree, 3d March 1834, and the second furd of the deposition of Rammanick, 23d April, 1835, and the second furd of the draft of the final decision, 24th December, 1835, both dates of crime included within the period 3d of March, 1835, to 19th January, 1836.

3. Mr. Dampier has not adverted to the charge of forgery; but this does not alter the doubt that may arise, and which requires removal, that is, if a moonsiff in a civil case is found by the judge guilty of fabricating papers, and at the same time of official misconduct, how is the judge to proceed to commit, for both charges as in cases of forgery? or as the commissioner suggests to make the moonsiff over to the magistrate?

4. Again under Clause 2, Section 10, Regulation XXIII. 1814, what course is a judge to take? first of all he is to satisfy himself of the necessity of a criminal prosecution, but whether he is to commit the moonsiff to the court of circuit, or direct the vakeel of Government to petition the magistrate? on either course the clause is silent. May I solicit the orders of the Nizamut Adawlut on these points for future guidance?

To the Officiating Judge of Zillah Chittagong, dated 27th January, 1837.

I am directed to communicate to you, in reply to your letter of the 14th November last, the opinion of the Court, that after you had enquired into the alleged misdemeanors

and other criminal acts, charged against the moonsiff, you ought, provided you saw reason to believe that the charges were well founded, (vide Section 10, Regulation XXIII. of 1814) to have made over the case to the magistrate, to be disposed of according to law directing the Government pleader to prosecute on the part of Government.

The Western Court concurred in this construction.

January 27th, 1837.

To the Judge of Zillah Mymensingh.

No. 1070.

Mode of proceeding when records of the civil courts are required by officers in the resumption department.

I am directed to communicate to you, in reply to your letter of the 26th December last, the opinion of the Court that you ought not, in ordinary cases, to furnish the officers employed in the resumption department with the original records of your court, but that you should inform the special commissioner and deputy collector, that you will furnish them with copies of any papers that they may require, on their authorizing you to defray the expence of transcribing them. Should an inspection of the original record, or any papers filed therein, be indispensably necessary, you will then, previous to forwarding the same, retain an attested copy, the expence of making which must be defrayed by the revenue authorities.

The Western Court, on the 10th February, 1837, *concurred in this construction.—Letter to the Judge of Mymensingh issued 24th February*, 1837.

January 27th, 1837.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Nizamut Adawlut, dated 3d February, 1837.

No. 1071.

Power of a session judge or commissioner, in his appellate capacity, to call for an English report from a magistrate.

I am directed to request that you will submit, for the consideration of the Calcutta Court, the accompanying copies of a letter and its enclosures from the officiating session judge of Furruckabad, under date the 3d ultimo, requesting the opinion of the Court as to whether a session judge or a commissioner has a right, in his appellate capacity, to call for an English report from a magistrate.

In ordinary cases where an appeal may be lodged against an act of a magistrate or joint magistrate the Court are of opinion, that the commissioner of circuit or session judge, according as the appeal may lie to the one or the other, should confine himself to calling for the proceedings in the case, or for a Persian kyfeeut or report if such should appear necessary; but that in special cases those officers must be considered fully competent, in their general capacity of controlling authorities, to require a report in English on any particular points which may appear to call for explanation, especially in regard to any irregularities or other defects apparent in the magistrate's proceedings, with a view to their bringing the same to the notice of the Court or Government, should the circumstances of the case seem to render that measure necessary or proper.

The Presidency Court, on the 3d March, 1837, *concurred in this construction.*

February 3d, 1837.

Extract of a Letter from the Officiating Register of the Western Provinces to the Register of the Presidency Court of Nizamut Adawlut, dated 3d February, 1837.

No. 1072.

A magistrate cannot compel a landholder to repair the public roads passing through his estate.

Para. 1. I am directed by the Court to request that you will submit, for the consideration of the Calcutta Court, the accompanying copies of a letter from the officiating commissioner of the second division under date the 24th ultimo, and of its enclosure, from the magistrate of zillah Agra.

2. The Court propose, with the concurrence of the Calcutta Court, to inform the latter officer that they are not aware of any Regulation which authorizes a magistrate to compel a zemeendar or other landholder to repair the public roads passing through his village or estate.

The Presidency Court, on the 3d March, 1837, *concurred in this construction.*

From the Officiating Judge of Zillah Shahabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 5th January, 1837.

Domun Singh *versus* Girdharee Loll.

No. 1073.

When a suit is sent back for re-trial, unless the order specially restricts the enquiry to any particular point or points, the whole case must be considered as re-opened.

I have the honor to transmit herewith a copy of a proceeding of the Court of Sudder Dewanny Adawlut, in the above case, dated 29th August last, with respect to which I beg to be favored with the orders of the Court as to whether in such cases I am required to investigate only the points, and to take the particular evidence to those points, indicated by the Court's order, or whether I am at liberty to enter into a further investigation of the entire merits of the case and take evidence not indicated by the superior Court.

2. The vakeel of the appellant in the superior Court stated that a pedigree pleaded by him could be proved by two witnesses whose evidence I had omitted to take: at the time he made this statement one of the witnesses (a party to this case in the principal sudder ameen's court) was dead, the other was a plaintiff in another suit against the same defendant on the very same ground; the pleader in this Court consequently demurs to calling him, and gives no other evidence to prove the pedigree as he is permitted to do by the Court, but offers oral testimony to prove a point to which I am directed by the superior Court to take documentary evidence mentioned in their proceeding. I beg to be apprised whether it is allowable for me to receive evidence at variance with that, the non-receipt of which formed the ground of the annulment of the orders of this court.

To the Officiating Judge of Zillah Shahabad.

I am directed to inform you, in reply to your letter of the 5th January last, that when a suit is sent back for re-trial, unless the order specially restrict the enquiry to any particular point or points, the whole case must be considered as re-opened.

The Western Court, on the 24th February, 1837, *concurred in this construction.—Letter to the Officiating Judge issued 10th March,* 1837.

February 10th, 1837.

From the Session Judge of Zillah Shahabad to the Register of the Presidency Court of Nizamut Adawlut, dated 29th December, 1836.

No. 1074.
1836
Act XXX.

I have the honor to request the favor of your obtaining for me the opinion of the Court of Nizamut Adawlut respecting the construction to be put on Act XXX. 1836, whether under that enactment a session judge is required to dispense with futwas on trials of persons charged with *specific* acts of murder and thuggee.

To the Session Judge of Zillah Shahabad, dated 10th February, 1837.

I am directed to communicate to you the opinion of the Court that the provisions of Act XXX. of 1836, do not authorize a session judge to dispense with a futwa on the trial of a prisoner charged with specific acts of murder and thuggee, unless the prisoner be tried under the provisions of Regulation VI. of 1832.

The Western Court, on the 27th January, 1837, *concurred in this construction.*

February 10th, 1837.

From the Officiating Judge of Zillah Shahabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 12th November, 1836.

No. 1075.
1822.
Reg. XI. Sec. 38.

I have the honor to request that you will obtain for me the opinion of the Court of Sudder Dewanny whether, if the collector is sued, together with others, for an act done by him under an order of court, the case must necessarily be nonsuited under the wording of Section 38, Regulation XI. 1822, or is it sufficient that the collector's name be struck out of the list of defendants, and the case be allowed to proceed against the other defendants?

To the Officiating Judge of Zillah Shahabad, dated 21st February, 1837.

I am directed to communicate to you the opinion of the Court, that in suits of the nature of those referred to by the late officiating judge, in his letter of the 12th November last, No. 339, on the case being first brought up for a hearing, under the rule contained in Section 10, Regulation XXVI. of 1814, it should be pointed out to the plaintiff or his vakeel, that he had rendered himself liable to be nonsuited, for improperly making the collector a defendant in his official capacity; and if he should plead that he had done so from inadvertence, and it should appear to the satisfaction of the court that the act was not wilful, and had not proceeded from any fraudulent or other improper motive, he should be allowed to file a supplemental plaint, withdrawing his claim against the collector as a Government officer; when it would be competent to the judge to proceed with the suit against the other defendants, and either to dispose of the case himself, or to refer it to any of the subordinate judicial functionaries, by whom, from its amount, it might be cognizable under the general rules in force.

The Western Court, on the 13th January, 1837, *concurred in this construction.*

February 21st, 1837.

Extract of a Letter from the Judge of Zillah Tirhoot to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 28th December, 1836.

No. 1076.
1819.
Reg. II. Sec. 30, Cl. 7, 8.

Para. 1. Doubts have occurred to me as to the construction to be given to Clause 8, Section 30, Regulation II. of 1819, and I therefore solicit the solution of them, through you, from the Court of Sudder Dewanny Adawlut.

2. In the first place, what is meant by the words " and shall proceed to investigate and decide on the case in like manner as if it had been *instituted* in the court ?" for cases originally instituted in court are regular suits, not appeals.

3. If it is intended to mean that they are to be proceeded in as regular appeals, I would enquire, whether in that case the rules of practice in appeals under Clause 3, Section 16 of Regulation V. of 1831 shall apply ? or the old rules for regular appeals ? because no allusion is made to appeals under Clause 8, of Section 30 of Regulation II. of 1819, in Regulation V. of 1831, and therefore not being rescinded the rules formerly obtaining, regarding all regular appeals, may be held to be still binding in these appeal cases under Regulation II. of 1819, and in that case process must be served on respondent, and security tendered for eventual costs with the petition of appeal.

4. In this court appeal cases of this nature appear to have been considered in some degree to come under Regulation V. of 1831, and have been taken up in the first instance with a view to ascertain whether an appeal ought to lie without serving process on the respondent.

To the Judge of Zillah Tirhoot, dated 24th February, 1837.

I am directed to inform you that the provisions of Clause 3, Section 16, Regulation V. 1831 are applicable only to appeals from the decisions of moonsiffs, sudder ameens and principal sudder ameens : appeals from the decisions of collectors under Clause 7, Section 30, Regulation II. 1819, must therefore be taken up and tried under the rules in force prior to the enactment of the clause first cited.

The Western Court, on the 10th February, 1837, *concurred in this construction.*

February 24th, 1837.

From the Judge of Zillah Ghazeepore to the Officiating Register of the Western Provinces, dated 28th February, 1837.

No. 1077.
1808.
Reg. XIII. Sec. 11, Cl. 2.

The construction of Clause 2, Section 11, Regulation XIII. 1808, contained in the Court of Sudder Dewanny Adawlut's order (paragraph 2) dated 12th September, 1811, No. 90 of the printed construction book, would appear to imply a discretion in the zillah court, somewhat at variance with the modified rules laid down in the provisions of Section 11, Regulation XIII. 1808, namely, that of staying the execution of its own decrees for real property, in case the appellant (being in possession) should have regularly preferred his appeal, and tendered to the zillah court proper security, and moved it

to suspend execution until the orders of the superior Court be received; whereas under the spirit of the last quoted enactment, the admission of such motions on the part of the appellant, under any circumstance whatever, has virtually ceased to exist. I request therefore to be favored with the Court's instructions, whether it is competent to this tribunal or the subordinate courts to entertain any motion of the above description without the previous issue of an order to that effect from the appellate Court or otherwise.

2. With reference to the Court's further construction of the same Clause under date the 1st January, 1830, paragraph 2, No. 536 of the printed construction book, taken in connection with the rule passed in the latter part of Clause 3, Section 16, Regulation V. 1831, for enabling the respondent to take *immediate* measures for the execution of the decree confirmed in appeal, I wish to be informed, whether it is imperative on the courts, in all cases where the Regulations allow a second or special appeal, to demand from the decree-holder security to abide the ultimate award, in the event of his wishing to obtain possession under the decree within the period allowed for the appeal. A practice the reverse of this has hitherto prevailed in this district.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 10*th March*, 1837.

I am directed by the Court to request that you will submit, for the consideration of the Calcutta Court, the accompanying copy of a letter from the judge of zillah Ghazeepore, under date the 28th ultimo, involving a construction of Clause 2, Section 11, Regulation XIII. of 1808.

2. With regard to the first point noticed by Mr. Smith, the Court observe, that the construction adverted to in his letter (No. 90 of the construction book) had reference merely to the power vested in the appellate tribunals of restoring an appellant to possession after it had been given to respondent by the lower court; though, as noticed by Mr. Smith, it incidentally implies a discretion on the part of the lower court to delay for a reasonable period the execution of its own order for giving possession to the respondent in case of an appeal, until the receipt of instructions from the appellate Court; and the Court do not see any thing in the clause under consideration which would preclude the exercise of a sound discretion in particular cases, which may appear to require it.

3. The Court remark that the second point referred by Mr. Smith, has already been provided for in the letter to the address of the judge of Cawnpore dated 1st January, 1830, No. 536 of the construction book, and they are of opinion that the rule therein laid down, which they do not consider to have been superseded by Clause 3, Section 16, Regulation V. of 1831, or any subsequent enactment, should continue to be observed.

The Presidency Court, on the 25*th March*, 1837, *concurred in this construction.*

March 10*th*, 1837.

From the Judge of Zillah Tirhoot to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 11th February, 1837.

No. 1078.
Circular order, No. 197, Vol. 2d, 13th January, 1837.

I have the honour to acknowledge the Court's circular of the 13th ultimo, directing the discontinuance of the obtaining practice of employing moonsiffs to conduct investigations under Sections 50, 51, 52, 53 and 54 of Regulation XXIII. of 1814.

2. With reference to the 5th clause of the 4th paragraph of the above order, I beg to be informed how and from whom the zillah courts shall levy for the ameens the fee of one anna in the rupee, in cases of investigations into sufficiency of securities tendered to the Court of Sudder Dewanny or other zillahs, and in cases of paupers, and in cases of enquiries directed by judges of other zillahs ?

3. It is my intention to endeavor to obtain the aid of the central cauzies of each moonsiffship to carry into effect the order now issued, as it appears to me they would have more local experience and would therefore be better able to afford efficient aid.

To the Judge of Zillah Tirhoot.

I am directed to inform you that no fees can be levied for the remuneration of the ameen appointed under the circular order of the 13th January last, No. 217, in cases in which he may be employed in investigating the sufficiency of securities tendered to the Court of Sudder Dewanny Adawlut or other zillahs, and the circumstances of parties wishing to sue *in formâ pauperis.* Should you therefore consider it objectionable to employ, on these duties, persons who do not receive any fees, you are at liberty, as heretofore, to confide this duty to your nazir or to the moonsiffs.

2. In regard to enquiries directed by the judges of other districts, the Court direct me to observe that whether any fees can be levied or not, must depend upon the nature of the enquiry.

The Western Court, on the 31st March, 1837, concurred in this construction.

March 10th, 1837.

From the Secretary to the Government of Bengal to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 24th January, 1837.

No. 1079.
1819.
Reg. II. Sec. 13

Letter from Secretary Sudder Board of Revenue, with enclosures, dated 20th August, 1836.
To ditto in reply dated 30th ditto.
From ditto, with enclosures, dated 2d January, 1837.

I am directed by the Right Honorable the Governor of Bengal to transmit to you in original the correspondence specified in the margin, and to request the opinion of the Court regarding the construction of Section 13, Regulation II. of 1819, in cases where the final decision may be in favour of the right of Government to assess the lands attached, and also where the lands may be eventually decreed not liable to assessment.

To the Secretary to the Government of Bengal, dated 10th March, 1837.

I am directed by the Court to acknowledge the receipt of your letter of the 24th January last, No. 123, and its enclosures, and, in reply, to forward the accompanying

copies of minutes* recorded on the subject thereof by the judges of the Court, from which the Right Honorable the Governor of Bengal will perceive that the majority of the Court are of opinion that if the attached lands be finally adjudged liable to assessment, Government are entitled to the mesne profits during the attachment, while on the other hand, if the lands be declared exempt from public assessment, the proprietors have a just claim against Government for the mesne profits which accrued while the lands were under the charge of the revenue authorities.

March 10*th*, 1837.

From the Assistant in Charge of the Office of the Judge of Sylhet to the Register of the Presidency Court of Sudder Dewanny and Nizamut Adawlut, dated 7th February, 1837.

No. 1080.

Civ. circular order, No. 131, Vol. 2d, 6th February, 1835.

1 request to know whether an assistant in charge is competent to try and punish cases of resistance to processes in giving possession of lands bought at the public sale.

2. Though not exactly a current duty of the office as specified in the Sudder Dewanny circular of the 6th February, 1835, No. 131, I am induced to ask for permission, as otherwise great delay will arise in giving possession, and the unfortunate purchasers, without having any benefit from their purchase, are called upon to pay the rents as if they were in full enjoyment of the estate.

To the Assistant in Charge of the Office of the Judge of Sylhet.

I am directed to communicate to you the opinion of the Court that an assistant in charge of the office of civil judge may summon parties charged with resistance of civil process, and examine the witnesses for and against the prosecution, and, if he consider the charge proved, hold the offenders to bail until the arrival of the judge, who, under the provisions of Section 3, Regulation IX. 1799, must pass the final order.

The Western Court, on the 31*st March*, 1837, *concurred in this construction.—Letter to the Assistant issued* 21*st April*, 1837.

March 16*th*, 1837.

From the Session Judge of Zillah Bundelkund to the Officiating Register of the Western Provinces, dated 4th March, 1837.

No. 1081.

It is not required by any law, that an appeal from the order of a magistrate should be accompanied by a copy of the proceeding or decision appealed against.

It has heretofore been the practice to receive appeals from the orders of the magistrate subordinate to this court without requiring the appellant to produce a copy of the magistrate's orders; but as I have doubts whether I am at liberty to dispense with the latter, I shall feel obliged by a communication of the Court's orders on the subject.

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* It has not been considered necessary to print the minutes.

From the Officiating Register, Western Provinces, to the Register of the Presidency Court of Nizamut Adawlut, dated 17th March, 1837.

I am directed by the Court to request that you will submit, for the consideration of the Calcutta Court, the accompanying copy of a letter from the session judge of Bundelkund under date the 4th instant.

2. With regard to the question involved in Mr. Fraser's reference, the Court direct me to state that they are not aware of any Regulation, which requires that an appeal from the order of a magistrate or joint magistrate should be accompanied by a copy of the proceeding or decision appealed against. It might, the Court remark, be inferred from the terms of Section 5, Regulation III. of 1821, which, in limiting the period of appeal from such orders to one month, provides that the time shall be calculated upon the principles of the rules contained in Clause 10, Section 8, Regulation XXVI. of 1814, that it was intended that appeals in criminal matters should be accompanied by a copy of the order appealed against equally as in civil; but the Court are of opinion that the rule just cited is applicable to those cases only in which the parties may themselves file a copy of the lower court's order with their petition of appeal, and that, adverting to the expense of procuring a copy of the magistrate's order or proceeding which must be written on stampt paper, and to the delay which not unfrequently takes place before it is granted, during all which time the party is undergoing the sentence awarded against him, it was not intended to debar such party from preferring his petition of appeal immediately on the passing of the order or sentence, by which he might consider himself aggrieved without waiting for a copy of it.

To the Officiating Register of the Nizamut Adawlut, Western Provinces, dated 21st April, 1837.

I am directed by the Presidency Court to acknowledge the receipt of your letter of the 17th ultimo, No. 253, enclosing copy of a letter from the session judge of Bundelkund under date the 4th ultimo, and in reply to state that the Court concur in the construction which the Western Court propose to adopt in their answer to the session jndge. I am at the same time directed to observe that the Court consider it to be discretionary with the session judge or commissioner in such cases to call for the magistrate's proceedings or not, with reference to the circumstances of each particular case, as he may see occasion.

March 17th, 1837.

From the Judge of Zillah Ghazeepore to the Officiating Register of the Western Provinces, dated 23d March, 1837.

No. 1082.

A pleader dismissed from his situation by a judge cannot be permitted to practise

Under the generally received maxim, that it is not within the competency of a public functionary to reverse, of his own authority, any order regularly recorded by his predecessor, however much he may dissent from the opinion which formed the basis of that

again by such judge's successor, without sanction having been obtained from the Sudder Dewanny Adawlut to review the order for dismissal.

order, I am doubtful of my competency to admit as a pleader of this court, an individual dismissed from that situation by the late additional judge with the concurrence of my predecessor in office, for having been guilty of an irregularity in the course of his official duty.

2. Without however adverting to the merits of this particular case, which his been twice before the Court of Sudder Dewanny Adawlut in the form of an appeal, I am desirous of being favored with the Court's opinion on the general principle above stated, as far as regards questions of a purely miscellaneous nature, wholly unconnected with any cause or suit decided or depending.

From the Officiating Register, Western Provinces, to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 31*st March*, 1837.

I am directed by the Court to request that you will submit, for the consideration of the Calcutta Court, the accompanying copy of a letter from the judge of Ghazeepore under date the 23d instant.

2. The Court are of opinion that the principle of the rule, referred to in the first paragraph of Mr. Smith's letter, must be considered equally applicable to cases of the nature of those described in the latter part of his communication, and that if in any instance a judge should see reason to question the propriety or legality of any order passed in such cases by his predecessor, and a revision of it should appear to him requisite for the ends of justice, he should apply to the Court for authority to grant the same in the prescribed form.

The Presidency Court, on the 14*th April*, 1837, *concurred in this construction.*

March 31*st*, 1837.

From the Judge of Zillah Dacca to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 10*th March*, 1837.

No. 1083.

Mode of proceeding against a vakeel, neglecting or refusing to give up his sunnud of office.

Kisheneh Nund Barajyah, formerly a vakeel of the court of the moonsiff of Talmah, who has been dismissed, will not give up his sunnud of appointment as required by Regulation XXVII. of 1814, Section 4, but has made a futile pretence on being applied to for the same, and gone out of the way when again sought for that purpose.

2. While legislating for taking back these sunnuds, the legislators have forgotten to point out any process by which they are to be obtained from parties unwilling to give them up: I solicit therefore the instructions of the Sudder Dewanny Adawlut in regard to such cases.

To the Judge of Zillah Dacca.

I am directed to inform you that in the case cited you should summon the vakeel to attend at your court; and in the event of his neglecting to attend, or, attending, to deliver up his sunnud, you are competent to punish him for evasion of process, or contempt of court.

The Western Court, on the 21*st April*, 1837, *concurred in this construction.—Letter to the Judge issued* 5*th May*, 1837.

March 31*st*, 1837.

From the Officiating Judge of Zillah Sylhet to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 30th December, 1836.

No. 1084.
1814.
Reg. XXVI.
Sec. 14, Cl. 8.

I have the honor to submit, for the consideration of the superior Court, the urgent necessity for modifying Clause 8, Section 14, Regulation XXVI. of 1814, by substituting the following clause in lieu thereof, should it meet with the approval and sanction of the Court to recommend the same.

Modified Rule, Clause 8.

" When the process is taken out, the nazir shall pay the peon serving the same two-
" fourths of the amonnt of the tullubanah received by him on account of such process,
" and when it shall have been executed and returned according to the preceding
" rules, the nazir shall pay another one-fourth to the peon and shall be entitled to appro-
" priate the remainig one-fourth of the tullubanah to his own use."

As the rule at present stands every pyada must perform the duty required from him by the nazir of serving process without a particle of tullubanah in his pocket, thereby leaving the individual clothed with the authority of his badge to commit oppression, and which, I fear, is sometimes done with impunity.

To the Judge of Zillah Sylhet, dated 31st March, 1837.

I am directed to communicate to you the opinion of the Court that a judge is not competent to exercise any interference in the matter referred to in your letter of the 30th December last, No. 46 ; but that the nazir may himself be permitted to exercise his discretion in advancing to the peon, on his own responsibility, such portion of the tullubanah as he might consider necessary for the subsistence of the latter while engaged in serving the process on account of which it was paid; consequently no modification of Clause 8, Section 14, Regulation XXVI. 1814, appears to be called for.

The Western Court concurred in this construction.

March 31st, 1837.

From the Officiating Session Judge of Furruckabad to the Register of the Court of Nizamut Adawlut, Western Provinces, dated 8th April, 1837.

No. 1085.
1819.
Reg. VII. Sec. 5.

I request the favor of your laying before the Court of Nizamut Adawlut the accompanying copy of a letter No. 125, dated the 4th instant, from the magistrate of Furruckabad, who solicits an opinion whether Section 5, Regulation VII. 1819, may be applicable in a given case.

From the Magistrate of Furruckabad to the Officiating Session Judge of the District, dated 4th April, 1837.

I shall feel obliged by your ascertaining for me from the Sudder Nizamut, whether the following case comes within the scope of Section 5, Regulation VII. 1819. A enters

into a contract with B, on the security of C and D, for furnishing a boat to convey certain goods of A, to a fixed place on the banks of the river; thereafter B, unloads the goods, and refuses to carry them on according to his agreement; can then B, not being a workman, be punished by the magistrate under the regulation quoted?

To the Officiating Session Judge of Zillah Furruckabad, dated 14th April, 1837.

I am directed by the Court to acknowledge the receipt of your letter of the 6th instant with its enclosure, from the magistrate of Furruckabad.

2. In reply, I am directed to inform you that in the case put by the magistrate, the provisions of Regulation VII. 1819 would not apply; the contract seems to have been of a purely civil nature, and security was taken for the performance of it; the person aggrieved should therefore seek his remedy in the civil court.

The Presidency Court, on the 12th May, 1837, concurred in this construction.

April 14th, 1837.

To the Register of the Court of Nizamut Adawlut, Western Provinces, dated 14th April, 1837.

No. 1086.

1806. Reg. II. Sec. 11. 1817. Reg. XVII. Sec. 13, Cl. 1.

I am directed by the Court to request that you will lay before the Court of Nizamut Adawlut for the Western Provinces the accompanying extract, paragraph 10, from a letter from the commissioner of circuit, 18th division, dated 10th ultimo, No. 20, submitting the trial of Hoorail Ram Shah for perjury.

2. The Court are of opinion that the wilful concealment of bond debts due to an insolvent debtor, examined on oath under the rules contained in Section 11, Regulation II. 1806, is punishable on conviction as wilful perjury under Clause 1, Section 13, Regulation XVII. 1817, and will, with the concurrence of the judges of the Western Court, so instruct the commissioner of the 18th division.

The Western Court, on the 28th April, 1837, concurred in this construction.

April 14th, 1837.

From the Acting Additional Judge of Zillah Chittagong to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 13th February, 1837.

No. 1087.

The fact of two distinct and separate debts, due by different individuals, being engrossed on a stamp of a value sufficient to cover the whole amount, would not vitiate the deed.

I have the honor to solicit the Court's construction, as to the legality of a Judge receiving a tumasook filed by a plaintiff suing for the amount, wherein money is stated to be lent to two persons unconnected with each other. Thus five rupees in the bond is stated to be lent to A and twenty-nine rupees to B, these persons are as far as I can judge unconnected, and even unknown to each other; it is in evidence the loans are embodied in one bond to evade the stamp duty the bond comes under, (on account of its date, Regulation I. of 1814,) which prescribes that bonds for these two sums should be written on paper of the value of two annas each. If I admit this document and decree on it, I afford means of defeating the intent of the stamp regulations.

To the Acting Additional Judge of Chittagong, dated 21st April, 1837.

I am directed by the Court to inform you that, provided the value of the stamp be sufficient, under the Regulation in force at the time the bond was executed, to cover the total amount of thirty-four rupees, the fact of two distinct and separate debts, one of five and the other of twenty-nine rupees, due by different individuals, being engrossed thereon, would not vitiate the deed. The bond is herewith returned.

The Western Court, on the 23d March, 1837, concurred in this construction.

April 21st, 1837.

To the Judge of Zillah Jessore.

No. 1088.
1829.
Reg. X. Schedule B.
1832.
Reg. VII. Sec. 3.

I am directed to observe that Section 3, Regulation VII. 1832, modifies Schedule B., Regulation X. 1829, only so far as relates to the value of the stamp on which "pleadings" in suits in the judge's court shall be written, and that all "ism-nuveesees" or the names of witnesses must as heretofore be charged as "exhibits" and written on stampt paper of the value of one rupee (see Art. 5 and 11, Schedule B.)

2. In reply to your second question, I am directed to state that in regular cases still pending before the Sudder Dewanny Adawlut, in which that Court may direct the zillah judge to take evidence to any particular point, the ism-nuveesee or the list of the names of witnesses filed before the zillah judge must be written on a stamp of the same value as if the same had been filed in the Court of Sudder Dewanny Adawlut, viz. two rupees; but in suits sent back for further investigation and re-trial to the zillah judge, the ism-nuveesees will be received on stampt paper value one rupee.

The Western Court, on the 12th May, 1837, concurred in this construction.—Letter to the Judge of Jessore issued 26th May, 1837.

April 21st, 1837.

Extract of a Letter from the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 28th April, 1837.

No. 1089.
Parties under attendance on the revenue authorities, exercising judicial powers, enjoy privilege from arrest by the civil courts.

Para. 1. I am directed by the Court to request that you will submit, for the consideration of the Calcutta Court, the accompanying copies of the correspondence, noted in the margin,* involving the general question whether parties in attendance under process before a collector or deputy collector, exercising judicial powers under Regulation VII. of 1822, or any other enactment, enjoy any legal privilege from arrest by the civil courts, or courts of Dewanny Adawlut.

* Letter from additional judge of Ghazeepore, dated 23d July, 1836.
Ditto to secretary to lieutenant governor, dated ditto.
Ditto from ditto with its enclosures, dated 20th October, 1836.
Ditto to secretary to Government, dated 3d March, 1836.
Ditto from ditto, dated 22d ditto.
Advocate-general's opinion.
Copies of Persian enclosures received from Sudder Board with letter, 17th February, 1837.

5. The Court observe that the existing Regulations contain no provision expressly exempting parties in attendance on the courts of Dewanny Adawlut from arrest in civil cases, but that on a reference to the Advocate General under date the 24th August, 1810, a copy of whose reply is annexed, the following opinion was obtained from that officer, viz. "that a man attending a court of justice as a party or witness in a cause of any sort, "could not be arrested on process in a civil suit, the protection being eundo, morando and "redeundo, and a reasonable construction being given as to what is going, staying and "returning." By this rule the Court observe that the practice of the civil courts in matters of this nature has hitherto been regulated, and with reference to the terms of Clause 1, Section 23, Regulation VII. of 1822, which declares that "in so far as concerns "the summoning and examination of witnesses, &c. in cases of the description of those "therein mentioned, the cutchery or office of the collector shall for the time being be "deemed and held a court of civil judicature," the Court are of opinion that under the spirit thereof the same principle must be held to apply to the proceedings of the revenue authorities when exercising judicial functions under the Regulation above cited, or any other enactment, and that consequently, when so engaged, they must be considered to be invested with the same powers in regard to the protection of parties, in attendance before them under process, from arrest in civil cases, as are possessed and exercised by the courts of Dewanny Adawlut.

Opinion of the Advocate General.

It is a rule with us that no man attending a court of justice as party or witness in any cause of any sort shall be arrested on process in a civil suit. The protection is eundo, morando, and redeundo, as we term it, and a reasonable indulgence is given in the construction of what is going, staying, and returning. As to the mode of procuring redress where a party is arrested contrary to this rule, if the arrest were made in the face of the court which he was attending, that court would take upon itself to liberate him and probably to punish those who are actually concerned in the arrest, for the contempt and disturbance, and they would probably interfere if the arrest was within reach of their aid, though not within their walls, so that they could by their interference give the party his privilege at the time. But if the arrest were made while the party was on his way to or from the court and out of its immediate reach for the purpose of prevention, he must apply to that court from which the process issues, to discharge him from the arrest.

*The majority of the Calcutta Court concurred.**

From the Officiating Additional Judge of Zillah Jessore to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 4th March, 1837.

No. 1090.
1830.
Reg. VI. Sec. 3.

I have the honor to forward herewith a copy of my proceeding under date the 1st instant, on a durkhast presented to this Court by Mr. Rainey, a zumeendar of this district,

* See construction No. 893.

applying for the confinement, in the civil jail here, of a person named Mirtunjoy Rai, against whom he holds a decree of the late Court of Appeal; and as I am uncertain whether under the peculiar circumstances of the case it can or should be complied with, request the favor of your procuring me the opinion of your Court in the matter for my guidance, &c.

2. Section 3 of Regulation VI. of 1830 states, "that if the plaintiff in any case shall neglect to pay the diet allowance for any defendant on or before the day on which it may become due, such defendant shall forthwith be discharged, and shall not again be liable to personal arrest and confinement in the same matter, &c. &c." Now in the case under report, it appears that Mirtunjoy was once before (in July, 1825) arrested and brought in this very matter and kept under charge of the nazir's chapprassis for seven days, when (no diet allowance being paid) he was released; and what I wish to know is, whether, under these circumstances, the said Mirtunjoy can again be arrested and confined for the same debt, or in other words, whether *temporary confinement under charge of peadahs*, &c. is to be considered as a bar to all further *personal arrest* towards defendants in all such cases.

To the Officiating Additional Judge of Zillah Jessore.

I am directed by the Court to inform you that under the circumstances stated, Mirtunjoy, never having before been confined in jail on account of the demand against him, is liable to be arrested and committed to jail under the decree of the late Calcutta Court of Appeal.

The Western Court, on the 2d June, 1837, *concurred in this construction.—Letter to the Officiating Additional Judge of Jessore, issued 23d June,* 1837.

May 19th, 1837.

From the Officiating Commissioner of Circuit, 12th Division, to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 14th March, 1837.

No. 1091.

Mode of proceeding in regard to a bund constructed by a person in his own land, which is injurious to the property of another.

I have the honor to submit, for the consideration of the Court of Sudder Nizamut Adawlut, copy of a letter addressed to me by the magistrate of Tirhoot on the 7th instant, with my reply thereto of to-day's date, and with reference to the point mooted by Mr. Wilkinson, to request the opinion of the Court on the following point.

2. A bund is constructed by A. on his own land, which bund B. proves to be injurious to his interests; can the magistrate order the destruction of the bund?

To the Officiating Commissioner of Circuit for the 12th Division, dated 26th May, 1837.

I am directed by the Court to observe that they are of opinion that cases of the nature of the one which forms the subject of the present reference, would appear to come more properly within the jurisdiction of the civil than of the criminal courts, but that particular instances may arise in which the immediate interference of the magistrate would

be necessary and proper to prevent either a breach of the peace or any serious injury to the property of the complainant, supposing of course the act complained against to have been of recent occurrence as would seem to have been the case in the instance under consideration.

2. The Court therefore direct that you will acquaint the magistrate of Tirhoot with the above opinion, and desire him to pass his orders in conformity with it and according to the facts of the case that may be established before him, leaving any party dissatisfied with his order to appeal to your court in the usual manner.

The Western Court, on the 28th April, 1837, *concurred in this construction.*

May 26th, 1837.

From the Register of the Western Provinces to the Officiating Register of the Presidency Court of Sudder Dewanny Adawlut, dated 2d June, 1837.

No. 1092.
1823.
Reg. VI.
1831.
Reg. V. Sec. 5.
1836.
Act X. Sec. 5.

I am directed by the Court to request that you will submit, for the consideration of the Calcutta Court, the accompanying extract, paragraph 52, of a letter from the officiating judge of Furruckabad, containing his annual report on the administration of civil justice in that district for the past year.

2. With regard to the general question involved in the paragraph under consideration, the Court direct me to state that it might be inferred from the terms of Section 5, Act X. of 1836, that the moonsiffs had no jurisdiction in regular suits of the nature of those therein described, though otherwise in all respects within their cognizance; the Court observe, however, that Regulation V. of 1831 contains no exception in respect to such cases, nor are they aware of any other rule on the subject; and they are, therefore, of opinion that, under the strict spirit of the existing laws, regular suits instituted in conformity to the provisions of Regulation VI. of 1823, or of the Act above cited, in which the amount or value of the claim may not exceed 300 rupees, and in which neither party may be an European British subject, European foreigner, or an American, are cognizable by the moonsiffs in like manner with all other cases legally within the competency of those officers to dispose of.

Extract from a Letter from the Officiating Judge of Furruckabad.

Para. 52. Suits under Regulation VI. of 1823, regarding indigo, are not included in the exceptions of Section 5, Regulation V. 1831, which detail the suits cognizable or otherwise by moonsiffs. I have in the case of a suit noted in the margin* prohibited the moonsiff of Chilrarnow from trying it, adverting to Section 5, Act X. of 1836, by which it is rendered competent to the judge to refer such suits to the sudder ameen or principal sudder ameen, whence an inference may be drawn that the moonsiffs are not empowered to try such suits.

* Mr. Birch *versus* Joonlpershad, &c. defendants, rupees 21-6, penalty three times the sum advanced, under Clause 4, Section 5, Regulation VI. 1823.

The Presidency Court, on the 23d June, 1837, *concurred in this construction.*

June 2d, 1837.

From the Judge of Zillah Moradabad to the Officiating Register of the Western Provinces, dated 3d April, 1837.

No. 1093.

Applications on stampt paper for the payment of money deposited in court are necessary except when payment has been specifically ordered.

It has been the custom in this zillah, and I believe is generally observed in the other courts, to require applications for an order for the payment of money deposited in court to be written on stampt paper of the value of eight annas. This course appears to me to subject the persons for whom the money is deposited, to a stamp duty not contemplated by the Regulations. Sums for a less amount than fifty rupees, when paid to claimants, are given on receipts taken on plain paper, but before they can procure an order for the payment, they must be subjected to a demand of eight annas, and when the sums are trifling this is found to be a heavy tax. After the amount has reached the treasury of the court the applications to receive the sum, in my opinion, should be made on plain paper, the receipts of course, when the amount exceeds fifty rupees, being on stampt paper. I request the Court's opinion on this point.

To the Judge of Zillah Moradabad, dated 9th June, 1837.

The Court having again had before them your letter No. 20, under date the 3d April last, direct me to communicate to you their opinion, in reply to the question therein submitted, that applications for the payment of sums of money deposited in court must in every case be made on stampt paper as a record, unless a specific order should, at any time, have been passed ordering payment of the amount.

The Presidency Court concurred in this construction.

June 9th, 1837.

From the Judge of Zillah Chittagong to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 23d May, 1837.

No. 1094.

1831.
Reg. VIII. Sec. 15.

I beg leave to submit, for the orders of the superior Court, a copy of my proceedings under date the 13th instant, held in the case of Ameen Shurreef, appellant, *versus* Mahomed Bouhir, respondent. The point I desire to bring to the notice of the Court is the want of observance on the part of the revenue authorities to the legal requisitions of the court calling for the record of a summary suit under Section 15, Regulation VII. 1831. The collector indeed contends that the matter is not the same. The decision of the collector and the decisions of the lower tribunals are herewith submitted; and I believe there will not be two opinions upon the question that really the cause of action originates from the same source—a claim on the part of the appellant to hold a tabook at a fixed rent, and a claim on the part of the respondent to assess the lands at the village rates; the appellant by Section 33, Regulation XI. 1822, has a right to resist payment until a final decree is passed by a competent court of justice.

2. That decree has not yet been given, for the cause of action is under abeyance in a special appeal, and the series of actions constitutes only one suit. The retention of

the record, and the judgment of the collector may therefore involve what the legislature sought to avoid, that is, contrariety of opinion. And opposition to what appears to me a legal order of the court is, to say the least, not treating it with that respect which is its due. I call upon the superior Court, if I am not in error in the premises, to support my authority.

To the Judge of Zillah Chittagong.

I am directed to inform you that, in the opinion of the Court, it is not necessary for them to pronounce whether the matter pending before the collector and yourself is, or is not the same. It is sufficient that you at present believe it to be so, and that you conceive it to be essential to the decision of the suit instituted in your court that you should be furnished with the record in question.

2. Accordingly the Court desire me to inform you that if the collector refuses to obey your orders, it is competent to you to proceed according to Section 36 of Regulation XIV. 1793.

The Western Court, on the 11th August, 1837, concurred in this construction.—Letter to the Judge issued 1st September, 1837.

June 23d, 1837.

Resolution of the Presidency Court of Sudder Dewanny Adawlut, under date the 30th June, 1837.

No. 1095.

Circular Order No. 171, Vol. II. 4th March, 1836.

The Court, having had under their consideration the circular order No. 171, of the 4th March, 1836, are of opinion that interest on the cost of suits should be granted in all cases, whether the claim be for money, land, or any other description of property.

The Western Court, on the 21st July, 1837, concurred in this construction.

June 30th, 1837.

From the Officiating Judge of Zillah Chittagong to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 28th February, 1837.

No. 1096.

Fines under Sec. 12, Reg. III 1793; Sec. 9, Reg. II. 1803; Sec. 21, Reg. IV. 1793; Sec. 22, Reg. III. 1803; Sec. 3, Reg. XIII. 1796; Sec 35, Reg. IV. 1803; how to be realized.

I beg to solicit the opinion of the superior Court whether in case of the non-attendance of a party fined under Section 21, Regulation IV. 1793, and Section 3, Regulation XIII. of 1796, also Section 12, Regulation III. 1793, the fine is to be levied under process as in execution of decrees, and whether or no Section 3, Regulation XIII. 1796, is to be construed as contempt of court: in instances coming under Regulation XIII. 1796, are not the person and property both tangible?

To the Officiating Judge of Zillah Chittagong, dated 7th July, 1837.

I am directed to inform you that, as the law now stands, in cases coming under the provisions of Section 12, Regulation III. of 1793, the party fined is liable to be committed to close custody until the amount be paid, but that, where the fine may be imposed

for a litigious appeal in conformity to Section 3, Regulation XIII. of 1796, the amount, if not immediately forthcoming, should be realized under the same rules as are applicable to the execution of decrees of court.

The Western Court concurred in this construction.

July 7th, 1837.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny and Nizamut Adawlut, dated 8th July, 1837.

No. 1097.

1814.
Reg. XXVIII.
Sec. 12, Cl 3.
An order of the S. D. A. refusing to admit an appeal *in formâ pauperis* is not appealable to the Queen in Council.

A question having arisen as to whether an appeal lies to the King in council from a summary order passed by the Court of Sudder Dewanny Adawlut, refusing on the grounds specified in Clause 3, Section 12, Regulation XXVIII. of 1814, to admit an appeal *in formâ pauperis* from the decisions of a zillah judge, in which the sum or value awarded amounted to 50,000 rupees, the petitioner being, at the same time, left at liberty to institute his appeal on performing the conditions prescribed by the Regulations for persons not suing as paupers, I am directed to request you will submit the point for the consideration and opinion of the Calcutta Court.

* Syud Kulundur Ali *versus* Dhoomun Bebee and others, respondents. Page 105, volume IV. S. D. Reports.

The Court observe that in the case cited in the margin* it was ruled by the Court of Sudder Dewanny Adawlut that an order passed by a Provincial Court, refusing to admit an appeal *in formâ pauperis* on the merits of the case, and without reference to the question of pauperism, was final and conclusive; and that in a note appended thereto, it is added that "the Sudder Dewanny Adawlut had, on many occasions, construed Clause 3, Section 12, Regulation XXVIII. 1814, as vesting the appellate authority with discretion to pass a final order not open to special appeal." The Court are of opinion that the same principle must be held to apply to orders passed by themselves of the nature of that described in the preceding paragraph, and that consequently no appeal lies from such orders to the King in council; and, should the Calcutta Court concur in this construction, they propose to adopt it as a rule of future practice.

The Presidency Court, on the 4th August, 1837, *concurred in this construction.*

July 8th, 1837.

From the Session Judge of Zillah Dinagepore to the Officiating Register of the Presidency Court of Nizamut Adawlut, dated 16th June, 1837.

No. 1098.

Mode of proceeding when a person, whether a European British subject or a native in a petition of appeal from the orders of a magistrate falsely and

I request you will be pleased to obtain for me the Court's orders on the following reference.

2. If, in a *petition of appeal* preferred to me as a session judge, on the part of a European British subject, or a native, from the decision of a magistrate or joint magistrate, (they covenanted officers of Government) the public character of either of those officers

maliciously asperses the character of that officer.

should be maliciously and calumniously aspersed in it, have I any power, under the Regulations of Government, of punishing the appellant, if I should deem it proper to do so, and if so, under what Regulation?

To the Session Judge of Zillah Dinagepore.

I am directed to communicate to you the opinion of the Court that if any person, whether a European British subject or a native, appealing from the decision of a magistrate or joint magistrate, falsely and maliciously asperses the character of such officer in his petition of appeal, or other document filed in your court, you are competent to punish the offence as for a contempt of court, under the provisions of Regulation XII. of 1825.

The Western Court, on the 4th August, 1837, *concurred in this construction.—Letter to the Session Judge issued 25th August,* 1837.

July 14th, 1837.

To the Register of the Nizamut Adawlut, Western Provinces, dated 21st July, 1837.

No. 1099.

1807.
Reg. II. Sec. 4, Cl. 3.

I am directed by the Court to forward the accompanying extract from the statement of prisoners punished, without reference, by the officiating session judge of Tipperah, at the monthly jail delivery of that district for June last, relating to the case of Thakoor Doss, No. 6 of the statement.

2. The Court are of opinion that the crime established against the prisoner amounts to the crime of "forgery" as described in Clause 3, Section 4, Regulation II of 1807; and they therefore propose, with the concurrence of the Western Court, so to inform the session judge, and to direct him to pass the minimum sentence prescribed by Clause 2, Section 9, Regulation XVII. of 1817, and to refer the trial for the Court's order should he think that punishment too severe.

July 21st, 1837.

Extract from the Statement of Prisoners punished, without reference to the Nizamut Adawlut, by the Session Judge of Zillah Tipperah at the Jail Delivery for the month of June, 1837.

No. of Cases.	No. of Prisoners.	Names of the Prisoners.	Sex.	Age.	Religion and Caste.	Profession.	Crime charged.	Crime established, and when it was commited.	Convicted on violent presumption or on full legal proof.	Sentence of the Session Judge, and when it was passed.	Explanation and Remarks.
3	6	Thakoor Doss,	Male,	35	Hindoo,	Employment,	Charged with opening the Government dawk wallet and extracting the telegraph, and altering the hour of arrival and despatch of the Government mail, with a view to defraud the Government. Committed for trial on the 17th June, 1837, by Mr. W. J. H. Money, officiating magistrate of Tipperah.	Convicted of opening the Government dawk wallet and extracting the telegraph, and altering the hour of arrival and despatch of the Government mail with a view to defraud the Government. Committed on the 8th May, 1837.	Full legal proof.	Sentenced to two years' imprisonment with labor in irons, 30th June, 1837.	This case was committed by Mr. W. J. H. Money, officiating magistrate, and tried by me with the aid of three assessors. It may be thus stated. The prisoner was agent of the dawk contractor at this station for checking the entries in the telegraph, according to which his em-

ployer receives a premium, or otherwise, with reference to the rate at which the mails travel. It appears that the prisoner's superintendence extends along the line from Comillah to Dacca. On the 8th of May last, after the mails had been despatched from the post office, and proceeded about a mile on the Dacca road, the prisoner called the peon with the bag out of the high road to his own house, a short distance from it; and there, having inserted his hand under the flap of the wallet, took out the telegraph, in which he altered the hour of the dawk's arrival from Chittagong, from three P. M. to five, and that of its despatch from three and a half P. M. to five and a half P. M., with a view to obtain the premium of the extra speed which would thus appear to have been attained between Comillah and Dacca, as would be shewn by the entry subsequently made of the hour of arrival at the Dacca post office. The alteration however was so palpable and the time gained so unusually great, that the postmaster general returned the telegraph, and called the attention of the deputy postmaster to it, who sent the case to the magistrate, before whom the above facts being clearly established the prisoner was committed for trial before this court. Here, as before the magistrate, he pleaded not guilty, but the crime being clearly established, in concurrence with my assessors he was sentenced accordingly. It is here to be observed that this very individual was convicted of uttering forged bank notes, under No. 1 of the Tipperah calendar for May, 1837, so that the period of his present sentence commences from the expiration of that before awarded him.

The Western Court, on the 18th August, 1837, concurred in this construction.

To the Register of the Nizamut Adawlut, Western Provinces, dated 21st July, 1837.

No. 1100.
1807.
Reg. IX. Sec. 4.

I am directed by the Court to forward to you the accompanying extract from their proceedings of this day's date, containing a construction of Section 4, Regulation IX. of 1807, which they propose, with the concurrence of the Western Court, to communicate to the commissioner of the 18th division, and to the officiating session judge of the 24-Pergunnahs.

July 21st, 1837.

Extract from the Proceedings of the Presidency Court of Nizamut Adawlut, under date the 21st July, 1837.

Para. 2. With regard to the second point noticed in the session judge's letter to the joint magistrate, viz. his directing that officer not to issue any summons or dustuk, on the report of a darogah, for the apprehension of a released convict, the Court remark that under the existing Regulations the magistrates are fully authorized* to apprehend such persons, whenever sufficient cause may appear for such a proceeding, upon the report of a police officer. The session judge's instructions therefore to the joint magistrate were in the judgment of the Court irregular, and they are accordingly annulled.

* Vide Sec. 4, Reg. IX. 1807.

From the Register of the Western Provinces to the Officiating Register of the Presidency Court of Nizamut Adawlut, dated 25th August, 1837.

I am directed by the Court to acknowledge the receipt of your letter No. 2287 under date the 21st ultimo, with its annexed extract from the proceedings of the Calcutta Court, containing a construction of Section 4, Regulation IX. of 1807.

2. It being expressly declared in the latter part of the section above cited, that the rule laid down in the preceding part shall not be considered to restrict a magistrate from issuing process to apprehend a person suspected of having committed a heinous crime, or for whose apprehension sufficient cause may be shewn, upon the report of a police officer or any other credible information, the Court direct me to state that they concur in the construction of the section in question, which the Calcutta Court propose to communicate to the commissioner of the 18th division and the officiating session judge of the 24-Pergunnahs.

From the Judge of Zillah Ghazeepore to the Register of the Court of Sudder Dewanny Adawlut, Western Provinces, dated 19th July, 1837.

No. 1101.
Reg. X. 1829. Schedule B. Article 8.

I request you will have the goodness to obtain for me the opinion of the Court of Sudder Dewanny Adawlut on the following point.

2. The rules for estimating the value of property, real or personal, claimable by action in the civil courts, contained in Section 14, Regulation I. of 1814, Section 23, Regulation XXVI. 1814, and Section 5, Regulation XIX. 1817, have been either formally or virtually superseded by the provisions of the note attached to Article 8 of Schedule B. referred to in Section 17, Regulation X. 1829, but no provision is expressly made in the fourth paragraph of the note in question, to meet the description of suits contemplated in the penultimate paragraph of Section 5, Regulation XIX. 1817, above quoted, as per extract in the margin.*

* "If the suit be not for a right of property, or for a permanent tenure, but for a farm leasehold of any denomination, during a limited term; or for any interest in the land during a limited period only, the valuation of the plaintiff's claim, in pursuance of the Regulations abovementioned, is to be made according to the nearest estimate that can be formed of the actual value of the thing sued for."

3. The question I would ask therefore is, whether the rules latest enacted, namely, those prescribed in the said fourth paragraph of the note to Schedule B. of Regulation X. 1829, are applicable to such cases, as well as to suits of the description particularized below, and to all other actions whatsoever, not coming within the meaning of the first three paragraphs of the note.

First.—Suits of kashtkars against the proprietors of the land whether assessed or rent-free, to maintain, preserve, or obtain possession of their right of cultivation in a given quantity of land, held on a potta by prescription or otherwise; or suit to reverse a summary decision of ejectment, passed against them in the zumeendars' favor, under the provisions of Regulation XLIX. 1793.

Secondly.—Suits on the part of the proprietors whether malgoozars or maafeedars, to eject an under-tenant from lands held by him in ryotty tenure.

From the Register of the Western Provinces to the Officiating Register of the Presidency Court of Sudder Dewanny Adawlut, dated 4th August, 1837.

I am directed by the Court to request that you will submit, for the opinion of the Calcutta Court, the accompanying copy of a letter from the judge of zillah Ghazeepore, No. 207, under date the 19th ultimo.

2. The Court propose, with the concurrence of the Calcutta Court, to inform Mr. Smith, that Section 5, Regulation XIX. of 1817, as well as all other existing Regulations relating to the imposition, levying and collecting stamp duties is rescinded by Section 2, Regulation X. of 1829; and as the latter enactment contains no express provision for computing the amount value of suits of the nature of those described in his letter, they must be considered as falling under the general rule laid down in the fourth paragraph of the note to Article 8, Schedule B. of that Regulation.

The Presidency Court, on the 25th August, 1837, *concurred in this construction.*

August 4th, 1837.

Resolution of the Court of Sudder Dewanny Adawlut, held at Fort William, under date the 18th August, 1837.

No. 1102.

Orders of the S. D. A. in miscellaneous cases, are not appealable to the Queen in council.

Read a translation of a petition presented by Ranee Jye Doorga, praying that she may be allowed to appeal to the King in council against an order of Mr. D. C. Smyth, for the sale of her property in satisfaction of a decree against her.

Read a proceeding held before Mr. D. C. Smyth, in which that gentleman records his opinion that the case is not appealable to the King in council, but at the same time directs, in compliance with the petitioner's request, that the matter be brought before the English sitting.

The Court, having taken into consideration the papers laid before them, concur in opinion with Mr. Smyth, that the orders of this Court in all miscellaneous cases are final. Accordingly it is resolved that the Court will in future decline to admit any appeals to the King in council, excepting such as are expressly provided for by Regulation XVI. of 1797.

The Western Court, on the 15th September, 1837, *concurred in this construction.*

August 18th, 1837.

Extract from a Letter from the Officiating Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 3d Feb. 1837.

No. 1103.

Meaning of the term "ba furzundan" as applicable to grants whether of land or money.

Para. 1. I am directed by the Court to request that you will lay before the Calcutta Court the accompanying copies of a letter from the secretary to the Honorable the Lieutenant Governor under date the 21st ultimo, and of its enclosure from the Honorable the Court of Directors, calling upon the Court for a definition of the legal and practical meaning of the term "ba furzundan" when made use of in "jaghire" grants of the nature of those referred to by the Honorable Court.

Extract of a Letter from the Deputy Register to the Register of the Court of Sudder Dewanny Adawlut, Western Provinces, dated 18th August, 1837.

Para. 1. I am directed by the Court to acknowledge the receipt of your letter noted in the margin,* on the subject of a reference from the Government of Agra regarding the import of the term "*ba furzundan*" when found in grants or sunnuds.

* No. 77 of the 3d February.

2. The Presidency Court have had a similar reference made to them by the Government of Bengal, and have resolved to submit a reply thereto, in the terms of the accompanying draft, which is now forwarded to you, for the concurrence of the judges of the Western Court, together with the several documents* therein referred to.

* Futwa of the law officers of the Court given in 1819, with a translation by Dr. Lumsden.
Futwa of the present law officer with a translation.

August 18th, 1837.

To the Secretary to the Government of Bengal in the Judicial Department, dated 27th October, 1837.

I am directed by the Court to acknowledge the receipt of Mr. Secretary Mangles' letter of the 13th December last, No. 1840, and its enclosures, requesting the Court's opinion in regard to the meaning and scope of the term "ba furzundan" as applicable to grants whether of land or money.

2. In reply, I am directed to observe that the only futwas the Court have been able to discover touching this question are, that in the case of Musst. Hya-oon-Nissa and Khoondgar Abdoolla, appellants, *versus* Mofukhur-ool Islam, respondent, (see page 106, volume I, Sudder Dewanny Adawlut Reports,) decided in 1805, a translation of which is found in page 331, Macnaghten's Principles and Precedents of Mahomedan Law, and one given by the law officers of this Court.

3. The first defines the term "furzundan." The question assumes that the grant is hereditary (and from its nature, and endowment for religious purposes, it is so,) and asks whether the grandson in the female line or grandson in the male line can be enumerated among the offspring or "*furzundan*" of the grantee. The answer declares "*furzundan*" to mean "lineal descendants in the male line," and excludes the grandson in the female line of the grandson in the male line, "because the descendant of a man's "daughters are not the lineal descendants of that man, lineage being derived from the "father, and not from the mother." It does not determine the meaning of the terms "ba furzundan" or "mye furzundan." The doubt is, whether the use of these terms creates of themselves an hereditary title without the addition of *nusulun baad nusulin* or words of the same import, or merely a joint interest during the lives of the grantee and his *furzundan*.

4. The futwa of 1819 is rather in favor of the later interpretation. The phrase "such and such places are granted in jagheer to Gholam Ahmed Khan and his children "*(mye furzundan)* must therefore be understood to signify that the places in question

"are granted to him and the children sprung from his loins, and will remain in their "possession during his own life and that of those children; but if at the period of the "grant, or subsequently, he had no children sprung from his loins, but only grand chil-"dren, (literally the children of children,) then the grant must be understood to intend "the latter."

5. As in the former case the grant is presumed to be hereditary, so in this a grant in jagheer is presumed; and a jagheer has been determined to be a life grant merely, (see case of collector of Bareilly versus William Charles, and John Martindell, page 188, volume II. of Select Reports.)

6. Under these circumstances the Court deemed it proper to consult their law officer; and from his futwa, in which they entirely concur, the Honorable the Deputy Governor will observe that the term *ba furzundan* is considered as conveying an hereditary title to the grantee and his lineal descendants, in the same manner as if the words nusulun baad nusulin had been used.

The Western Court, on the 22d September, 1837, concurred in this construction.

To the Officiating Session Judge of 24-Pergunnahs, dated 1st September, 1837.

No. 1104.
1807.
Reg. IX. Sec. 22.

I am directed by the Court to communicate to you their opinion that the existing Regulations give no power to a session judge to receive evidence, which has not been previously heard before the lower court, except in such cases as may have been regularly committed to him for trial at the sessions.

2. When a session judge is engaged in revising any case included in the magistrate's abstract calendar, which may appear to him not to have been sufficiently investigated, or in which further enquiry may be practicable or requisite for the ends of justice, such enquiry, according to Section 22, Regulation IX. of 1807, must be instituted by the magistrate who is to communicate the result thereof to the session judge. The principle of the rule laid down in the above Section, applies equally in the opinion of the Court to cases of the nature of those referred to by you.

The Western Court concurred in this construction.

September 1st, 1837.

From the Officiating Judge of Zillah Azimghur to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 9th August, 1837.

No. 1105.
Pleaders' fees in cases sent back for re-trial.

I have the honor to submit, for the orders and opinion of the Court of Sudder Dewanny Adawlut, the accompanying copy of a petition of Seetuldeal Tewary, who is a defendant in the case of Sunkerdeal (pauper) *versus* Seetuldeal, to obtain possession of mouzah Mullooah Phar, &c. at rupees 6,095-13-0.

2. Sunkerdeal instituted a suit as pauper which was decided in favor of the defendant by the additional judge of the zillah court of Juanpoor, who dismissed the suit. The

plaintiff appealed to the Court of Sudder Dewanny Adawlut, who, in their proceedings of the 22d August, 1835, considering that the decision was irregular, reversed the order of the additional judge, and directed that the case be tried *de novo*, having entered it on the file in the same number as it previously bore.

3. In the mean time this court was established, and the case being within its jurisdiction, it was sent here for trial.

4. The petitioner states that in this same case, he deposited in the court of Juanpoor the sum of about rupees 271-14½ as fee for his vakeel, who, on the decision of the case, drew out the amount, which he appropriated to his own use, and that the vakeels in this court now refuse to take up his case without his again depositing in this court a further amount of 271-14½ which sum he states that he cannot afford to pay.

5. By the order of the Court of Sudder Dewanny Adawlut, directing that the case be returned for further investigation, having brought it on the file in its former number, I am of opinion that it is not their intention that a further deposit for vakeels' fees should be made, but that it should be carried on by the same vakeels without other remuneration, which however in this instance cannot be effected, and I shall therefore feel obliged by your informing me whether it is necessary that the further deposit shall be made or not, as there are very many cases of the same nature frequently arising.

6. Also whether they consider that the vakeels are precluded by Section 23 of Regulation XXVII. of 1814, from acting in a suit where a deposit has not been made into court on their account, although the amount prescribed by the Regulations had before been deposited, and, on the decision of the suit in the first instance, been taken out by the vakeels previously employed.

From the Register of the Western Provinces to the Officiating Register of the Presidency Court of Sudder Dewanny Adawlut, dated 8th September, 1837.

I am directed to request you will submit, for the consideration of the Calcutta Court, the accompanying copies of a letter and its Persian enclosure from the officiating judge of Azimghur, dated the 9th ultimo.

2. The Court observe that under the provisions of Section 34, Regulation XXVII. of 1814 the vakeels, entertained in a regular civil suit, are required, without any additional fee, to make all motions and do all acts which may be requisite relative to such suit, not only during the trial of it, but after a decision shall have been passed, until the final judgment shall have been enforced; and as the case which has given rise to the present reference, cannot be considered to have been finally disposed of by the zillah court, the decision having been pronounced incomplete and the case ordered to be tried *de novo*, the Court propose, with the concurrence of the Calcutta Court, to inform Mr. Heyland that the defendant's vakeel should be required to refund the amount paid to him, leaving it to the court who may eventually decide the case, to award to him such portion

of the authorized fee as may appear an adequate remuneration for the trouble which he may have taken in the matter.*

The Presidency Court, on the 29th September, 1837, concurred in this construction.

September 8th, 1837.

From the Register of the Western Provinces to the Officiating Register of the Presidency Court of Nizamut Adawlut, dated 8th September, 1837.

No. 1106.

A collector is not authorized to administer an oath in investigating claims to pensions of the nature described in Regulation XXIV. of 1803.

I am directed by the Court to request you will lay before the Calcutta Court the accompanying copy of a letter from the session judge of zillah Allyghur, under date the 22d ultimo, submitting his proceedings on the trial cited in the margin.*

* Government *versus* Buldoo Doss. *Charge*—Perjury.

2. The Court observe that wherever it has been the intention of the legislature that officers, employed in the revenue department, should have power to examine parties on oath, or solemn declaration, in cases pending before them either judicially or otherwise, and that the legal penalties for perjury should be applicable to such parties in the event of their giving deliberately and intentionally a false deposition on oath, or under a solemn declaration, taken instead of an oath, an express provision to that effect is contained in the Regulations, as, for instance, in Section 22, Regulation XII. of 1817; Sections 19 and 29, Regulation II. of 1819; Section 19, Regulation VII. of 1822, and other similar enactments. The Court remark, however, that Section 29, Regulation II. of 1819, applies only to money pensions granted in lieu of land, the validity of the original tenure of which may be called in question, and invests the revenue officers with no power to examine parties on oath as regards the general class of pensions referred to in Regulation XXIV. of 1803, under which head the one in point would appear to be included; nor are the Court aware of any other enactment conveying such authority as respects that description of cases. Under these circumstances the Court see reason to doubt the competency of the collector to administer an oath to the prisoner in the case before them, and by consequence whether the prosecution for perjury can be legally maintained. Previously however to passing orders on the case, the Court are desirous of learning the opinion of the Calcutta Court upon the point of law involved in it.

September 8th, 1837.

From the Session Judge of Zillah Allighur to the Register of the Nizamut Adawlut, Western Provinces, dated 22d August, 1837.

I transmit herewith, to be laid before the Nizamut Adawlut, the proceedings on the trial noted in the margin* held at the station of Allighur on the 10th instant.

* Court of session judge, zillah Allighur, trial No. 4 of the calendar for the July sessions of 1837.

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* This supersedes the construction No. 840.

Government, prosecutor, *versus* Buldoo Doss, aged 60 years, son of Mohun Loll, prisoner, apprehended on the 23d June, 1837

Committed on the 24th July, 1837.

Charge—Perjury, 3d June, 1837.

2. The perjury in this case consisted in the prisoner falsely representing himself to be Mohun Loll, the son of Sudhaloll, the grantee of a pension given in Scindia's time, when, as sworn to by seven witnesses, it was shewn that he was Buldoo Doss, the son of the above named Mohun Loll, which was corroborated by the prisoner's witnesses Rambuksh and Pirb Sing who on being confronted with him at once called him Buldoo, son of Mohun Loll, and on being asked if he had any other name, replied they had heard he was also called Mohun in his junnum puttree or horoscope. but spoke from hearsay.

3. Hyder Ally, peishkar, and Sheo Sing, writer of the deposition, further deposed that the prisoner acknowledged his name was Buldoo at the Khyr Tehseelly.

4. The prisoner in this court persisted in calling himself Mohun Loll, and one witness appeared on his behalf, who declared he had not known him by any other name.

5. In concurrence with the assessors I deemed the prisoner guilty.

6. In accordance with the verdict, I referred to the Regulations for a punishment suitable to the crime and to my surprize was not able to discover any authorizing the collector to administer an oath in investigating pensions.

7. It will be perceived that, of the pension Regulations, XI. of 1813 alone touches on the abuses committed, and though the preamble states they merit exemplary punishment, yet no further provision is made to check the evil than the payment of six months' amount of any pension to the person, who shall satisfactorily prove to the proper authority that such pension has been fraudulently and unduly received.

8. Doubting therefore if Section 13, Regulation XVII. of 1817, can apply to a collector in such a case, I have thought it best to submit the case for the Court's orders.

To the Register of the Nizamut Adawlut, Western Provinces, dated 6th October, 1837.

I am directed by the Court to acknowledge the receipt of your letter No. 943, of the 8th ultimo, and to state in reply that they concur in the view taken of the case in question by the Western Court, but observe that if the act of perjury was committed in the course of an investigation into the conduct of the native officers authorized to pay the pensions, Clause 5, Section 10, Regulation VIII. of 1809 would apply.

Resolution of the Presidency Court of Nizamut Adawlut, under date the 8th September, 1837.

No. 1107.
1822.
Reg. VIII. Sec. 6.

The Court having duly considered the proposed draft of a letter to the Western Court and to the Government, relative to the competency of the special session judge for the trial of thugs, to try all persons committed on a charge of systematic poisoning, and having fully discussed at their English sittings the various points connected therewith, record the following resolution:

Under Section 6, Regulation VIII. of 1822, the Governor General in Council is competent to prescribe, by an order under the signature of a secretary to Government,

at what station and in what manner prisoners committed to take their trial for offences perpetrated within the limits assigned to joint magistrates shall be brought to trial. Considering therefore that the thuggee officers are vested with magisterial powers with respect to the specific crimes of thuggee and poisoning, the Court are of opinion that the words "*in what manner*" must be construed to include the particular tribunal before which such prisoners are to be tried, and that consequently the trials before Mr. Ravenshaw, who has been specially appointed by the orders of Government, under date the 21st February last, to try persons committed* on a charge of poisoning, must be considered to be regular and legal.

* Vide also Section 9 Regulation VII. of 1831.

The Western Court, on the 29th September, 1837, *concurred in this construction.*

September 8th, 1837.

From the Judge of Zillah Shahabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 8th August, 1837.

No. 1108.
1806.
Reg II. Sec. 11.

I request to be informed whether principal sudder ameens, sudder ameens and moonsiffs are authorized to enquire into the insolvency of prisoners confined in execution of decrees of their respective courts, and to order their release under the provisions of Section 11, Regulation II. of 1806. or whether the judge alone is competent to order the release of an insolvent prisoner.

To the Judge of Zillah Shahabad.

I am directed by the Court to inform you that in cases of insolvency where individuals have been imprisoned on an application from a native court, the judge presiding in such court is evidently the proper person to determine whether or not the debtor ought to be released. The petition should however be presented to the European judge, who may either take the deposition of the prisoner himself, or refer it to the officer presiding in such native court for investigation; and if the decision should be for a release, than an application should be made to the judge for an order on the jailor to that effect, leaving any parties dissatisfied with the decision of the lower court, the option of an appeal.

The Western Court, on the 22d September, 1837, *concurred in this construction.—Letter to the Judge of Shahabad issued 27th September,* 1837.

September 8th, 1837.

From the Register of the Western Provinces to the Officiating Register of the Presidency Court of Sudder Dewanny Adawlut, dated 15th September, 1837.

No. 1109.
Circular Order, No. 205, vol. 2d, June 30, 1837.

I am directed to request you will submit, for the consideration of the Calcutta Court, the accompanying copy of a letter from the judge of zillah Mynpoorie, under date the 4th instant, relative to the Calcutta Court's circular letter of the 30th June last, which was issued by this Court on the 4th ultimo.

2. From the reference to Clause 2, Section 16, Regulation XXVI. of 1814, in the circular in question, the Court conclude that the Calcutta Court intended it to apply only to the courts of the zillah and city judges, there being no similar rule applicable to the principal and other sudder ameens, and should they be right in this view they propose to furnish the judge of Mynpoorie with an answer to that effect.

September 15*th*, 1837.

From the Judge of Zillah Mynpoorie to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 4*th September*, 1837.

With reference to your circular letter No. 844 of the 4th ultimo, I have the honor to request the instructions of the Court whether the decrees of the principal sudder ameen should be engrossed on Europe paper as well as those of the judge, and if so whether I am at liberty to furnish that officer with paper for this purpose at the charge of Government.

2. As the decrees of principal sudder ameens are now of great importance, it appears to me desirable that they should be written on Europe paper, and with ink of European manufacture, which is not so readily obliterated as the Indian ink.

The Presidency Court, on the 27*th September*, 1837, *concurred in this construction.*

To the Officiating Secretary to the Government of Bengal, in the Judicial Department, dated 20*th October*, 1837.

I am directed by the Court to request that you will lay before his honor the Deputy Governor of Bengal the accompanying copy of a letter from the judge of zillah Shahabad, dated the 18th ultimo, No. 248.

2. His honor will perceive that the revenue authorities have refused to comply with an order issued by the Shahabad zillah court, because they consider it to be illegal. The Court concur in opinion with Mr. Dent, the present judge of the district, who holds that the collector should have complied at once with the order without questioning its legality, and then have appealed from it to the superior Court. They accordingly request that his honor will be pleased to issue such instructions to the revenue authorities as he may deem proper.

No. 1110.

In case of a sale of property (sold in execution of a decree) being reversed, and the deposit (previously forfeited to Government) ordered to be restored, the revenue authorities are bound to comply with the Court's order, appealing therefrom, if dissatisfied.

October 20*th*, 1837.

From the Judge of Zillah Shahabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 18*th September*, 1837.

Jeenwur Doss, Plaintiff, *versus* Acouree Jeycurn Sing, Defendant.

For the recovery of rupees 396-10, the amount of a decree against the defendant.

No. 1. Roobucaree of the additional principal sudder ameen, dated 10th September, 1836.
No. 2. Roobucaree of the judge, dated 14th September, 1836.
No. 3. Roobucaree of the judge, dated 29th September, 1836.
No. 4. Roobucaree of the collector of Shahabad, 4th Jan. 1837.

also,

No. 5. Roobucaree of the commissioner of Patna, dated 10th December, 1836, as bearing on the points referred to the Court.

I have the honor to submit the Persian proceedings noted in the margin, and to solicit the orders of the Court thereon.

8. The following is a brief statement of the circumstances of the case:

20 / 27 } October, 1837.

3. The right and title of the defendant in Mouza Chooramunpoor alias Koorkooree, was brought to sale on the 2d June, 1836, in execution of the decree in the above case, and purchased by Jaukee Sing and others, who made the usual deposit at the time of sale, and failing to pay up the balance of the purchase money within the stipulated period, the collector declared the deposit forfeited and carried it to the credit of Government. The sale was subsequently cancelled by this Conrt, and the collector was ordered to return to the purchaser the forfeited deposit, with which order, however, under instructions from the commissioner, the collector declined compliance. Under these circumstances I beg to refer the matter for the orders of the superior Court.

4. I agree with the commissioner in considering the judge's order for the return of the deposit *illegal*, for agreeably to the Regulations the deposit is forfeited to Government; still I am of opinion that the revenue authorities should have appealed the order, instead of declining compliance with it.

From the Officiating Secretary to the Government of Bengal, in the Judicial Department, to the Officiating Register of the Presidency Court of Sudder Dewanny Adawlut, dated 21st November, 1837.

I am directed by the honorable the Deputy Governor of Bengal to acknowledge the receipt of your letter No. 3173, dated the 20th ultimo, with its enclosure, and to request, in reply, that you will inform the Court that his honor concurs with them in the view they have taken of the point referred to them by the judge of Shahabad, in accordance with which, instructions will be issued through the Sudder Board of Revenue to the revenue authorities of that district.

From the Commissioner of the 18th Division to the Officiating Register of the Presidency Court of Nizamut Adawlut, dated 21st August, 1837.

No. 1111.
1819. Reg. VI. 1829. Reg. X. Schedule A. Exemption following Article 19.

The enclosed address from the officiating magistrate of the 24-Pergunnahs, under date the 18th instant, having reference to the construction of a regulation, I do not consider it within my competence to pass orders thereupon, and I beg to refer it for the consideration of the Court of Nizamut Adawlut.

From the Officiating Magistrate of Zillah 24-Pergunnahs to the Commissioner of Circuit, 18th Division, dated 18th August, 1837.

Certain lessees of the ghaut dues have petitioned to be relieved of the expense of having their kubooliyuts and security papers drawn out on stampt paper. On referring to the Stamp Regulation, X. of 1829, I find it stated in Schedule A, under the title of conveyances, that "all grants, *leases*, sales or the like, wherein Government in its political or territorial capacity is a party," shall be exempted from the duties thereby declared generally applicable.

2. I conclude that the ghaut renters are to be considered as holding "leases from Government, in its territorial capacity," and that they are accordingly entitled to the exemption above noticed; but as it has been the practice hitherto to employ stampt paper in this matter, I beg to refer the point for your decision.

To the Commissioner of Circuit, 18th Division, dated 27th October, 1837.

In reply to your letter No. 39, of the 21st August last, I am directed by the Court to inform you that the case alluded to therein comes within the meaning of the exemption in Schedule A of Regulation X. of 1829, and that the engagements, which farmers of Government property are obliged to enter into, are not required to be drawn up on stampt paper.

The Western Court, on the 22d September, 1837, *concurred in this construction.*

October 27th, 1837.

From the Register of the Western Provinces to the Officiating Register of the Presidency Court of Sudder Dewanny Adawlut, dated 10th November, 1837.

No. 1112.
1837.
Act XXV.
Government suits referrible to principal and other sudder ameens.

I am directed to request you will submit, for the consideration of the Calcutta Court, the accompanying copy of a letter from the judge of zillah Ghazeepore, under date the 2d instant, soliciting the opinion of the Court as to whether suits, in which the Government or its officers may be a party, are referrible, under the provisions of Act No. XXV. of 1837, to principal and other sudder ameens.

2. The Court observe that the enactment in question makes no exception in favor of cases of the foregoing description; and as, at the time of passing the Act, the question of jurisdiction in respect to such suits was before the Government on a reference from this Court, while in the resolution, published with the draft of the Act, under date the 31st July last, it is expressly stated that the Governor General in council does not deem it proper to maintain the rule, which precludes the native judges from adjudicating claims to which the Government of its officers may be a party, the Court are decidedly of opinion that it was not the intention of the legislature to exclude cases of the nature of those described by Mr. Smith from the cognizance of the principal and other sudder ameens, and that consequently they are referrible to those officers at the discretion of the judge in like manner with all other cases legally within their competency to dispose of.

The Presidency Court concurred in the above construction.

November 10th, 1837.

Extract of a Letter from the Register of the Western Provinces to the Officiating Register of the Presidency Court of Sudder Dewanny Adawlut, dated 17th November, 1837.

No. 1113.
1819.
Reg. X. Sec. 114.

Para. 1. I am directed by the Court to acknowledge the receipt of your letter, No. 3030, under date the 6th ultimo, relative to Section 114, Regulation X. of 1819.

2. Adverting to the terms of the first part of the section in question, which are positive and express, and distinctly declare that in cases of the nature of those therein described the award passed by the civil judge, under the preceding section, shall be final and conclusive, and not subject to my appeal whatever, the Court are of opinion that no appeal would lie to the Sudder Dewanny Adawlut on the merits of the case; but upon the general principle laid down in your letter of the 25th November, 1836,* they conceive that if the decree passed by the lower court in any case of the above description were manifestly illegal upon the face of it, or any such gross or glaring irregularity should have occurred in the course of the investigation as to vitiate the proceedings, it would be competent to the Court, under its general powers of superintendence and control, to order the zillah judge to revise his proceedings with a view to the correction of the error observable in them, and to proceed in the case according to law.

The Presidency Court, on the 1st January, 1838, concurred in this construction.

From the Register of the Western Provinces to the Officiating Register of the Presidency Court of Sudder Dewanny Adawlut, dated 24th November, 1837.

No. 1114.

It is not competent to a judge to liberate a civil prisoner solely on the ground of illness, without the consent of the party at whose instance he was confined.

I am directed by the Court to request that you will submit, for the consideration of the Calcutta Court, the accompanying copy of a letter from the judge of zillah Juanpore, under date the 13th instant.

2. The Court observe that the law makes no provision for cases of the nature of that which forms the subject of Mr. Morrieson's reference; the only authority, however, possessed by the civil courts under the regulations of releasing a prisoner, confined in execution of a decree of court, is in cases coming under the provisions of Section 11, Regulation II. of 1806, where the insolvency of the prisoner may be clearly established in the mode prescribed in that enactment; and the Court are therefore of opinion, that it is not competent to a judge to liberate a civil prisoner solely on the ground stated in Mr. Morrieson's letter, unless with the consent of the party at whose instance he was confined.

The Presidency Court, on the 8th December, 1837, concurred in this construction.

From the Judge of Zillah Juanpore to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 13th November, 1837.

I request you will submit the following question for the consideration and orders of the Court. In the event of a prisoner confined in the civil jail being reported by the surgeon dangerously ill, and recommended for immediate removal, can the judge of his own authority on such an occasion, without the concurrence of the creditor, liberate him from confinement? An instance of this kind has lately occurred, and I allowed a court peon to accompany a prisoner home, and to remain with him there till his recovery or otherwise, as the only way of saving the man's life; but I doubt if I have acted altogether legally, and I shall be obliged by a communication of the Court's sentiments on this point for my future guidance.

November 24th, 1837.

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* See Construction No. 1055, dated 17th October, 1836.

From the Register of the Sudder Dewanny Adawlut, Western Provinces, to the Register of the Presidency Court, dated 24th November, 1837.

No. 1115.

Mode of proceeding in cases of resistance of process, when the process has been issued by one court, but executed within the jurisdiction of another.

I am directed by the Court to request that you will submit, for the consideration of the Calcutta Court, the accompanying copy of a letter from the judge of zillah Etawah, under date the 18th instant.

2. With regard to the first question referred by Mr. Davidson, the Court observe, that when the judge of one district may be called upon to aid the process of another zillah court, the practice is for him to back the same with his official signature, and to send one or more of the peons of his court to aid in its execution; and they are therefore of opinion, that in ordinary cases any resistance to such process must be considered as a resistance to the process of the court within whose jurisdiction it took place, and is cognizable as such by the judge of that court.

3. As respects the second question, the Court are of opinion that it will be sufficient to communicate to Mr. Davidson the construction adopted, with the concurrence of both Courts, on a reference from the commissioner of the Patna division, dated the 21st May, 1836,* wherein it was held, that as under the provisions of Sections 23 to 26, Regulation III. of 1803, the civil courts are fully competent and required to take cognizance of cases of resistance to their process and to dispose of them under the rules therein laid down, the reference of such cases to the magistrate could become necessary only when the resistance was attended with any act of violence so as to bring the matter properly within his cognizance, in which event the case would probably be brought direct to the notice of the magistrate, or so far as the judge was concerned, it would simply be necessary for him to make over the papers to that officer without passing any opinion or order thereon, and to request him to dispose of the case under the general Regulations. In cases of this nature, the Court observe that, upon the principle above laid down, the offence would of course be cognizable by the magistrate, within whose jurisdiction it was committed, without reference to the court from which the process issued.

4. Should the Calcutta Court concur in the foregoing opinions, the Court propose to communicate them to the judge of Etawah, in reply to his letter under consideration.

From the Judge of Zillah Etawah to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 18th November, 1837.

May I beg the favor of your obtaining for me the orders of the Court on the two following questions of procedure:

1st.—On process being issued by the civil court of another district and served by its peons within the jurisdiction and by the aid of this court afforded through its peons, should resistance of process take place within the jurisdiction of this court, are the offenders amenable for the act of resistance solely to the original court issuing the process or to that

* See Construction No. 1033, 12th August, 1836.

within whose jurisdiction the offence occurs and whose peons whilst aiding in the service are also resisted?

2. In the event of the original court having solely cognizance of such a case of resistance of its process, I beg to know whether the resisting parties be also liable to a criminal prosecution for an act of assault committed on the peons of this court.

The Presidency Court, on the 8th December, 1837, concurred in this construction.

November 24, 1837.

From the Register of the Western Provinces to the Officiating Register of the Presidency Court of Sudder Dewanny Adawlut, dated 8th December, 1837.

No. 1116.
1814.
Reg. II.
1829.
Reg. X.
Schedule B. Article 8.

I am directed to request that you will submit, for the consideration of the Calcutta Court, the accompanying copy of a letter from the judge of Bundlekhund, under date the 29th ultimo, requesting the opinion of the Court as to the stamp paper which should be used for petitions of complaint preferred, agreeably to the provisions of Regulation II. of 1814, against the officers of Government in their official capacity.

2. The Court observe that the Regulations make no exception in favor of such petitions, and they are, therefore, of opinion that it was intended they should be written, when first presented, on stamp paper of the value in like manner with all other plaints.

The Presidency Court concurred in the above construction.

December 8th, 1837.

From the Register of the Western Provinces to the Officiating Register of the Presidency Court of Nizamut Adawlut, dated 8th December, 1837.

No. 1117.
1837.
Act XIX.

I am directed to request that you will submit, for the consideration of the Calcutta Court, the accompanying copy of a letter from the session judge of zillah Juanpore, under date the 28th ultimo, soliciting the opinion of the Court as to whether, under the provisions of Act XIX. of 1837, the evidence of a convicted prisoner is admissible against his accomplices in the same case.

2. The Court direct me to observe that the wording of the enactment in question is so general, that they are of opinion it was intended to include cases of the nature of that which forms the subject of Mr. Morrieson's reference, and that consequently, under its provisions, the conviction of a person of a criminal offence cannot be considered as constituting a bar to his giving evidence against his supposed accomplices in the same crime, it resting of course with the presiding officer, as in all other cases, to judge of the credibility of such testimony, or, in other words, to receive it "quantum valeat."

From the Session Judge of Zillah Juanpore to the Register of the Nizamut Adawlut, Western Provinces, dated 28th November, 1837.

As directed in the 6th paragraph of your letter No. 1420, of the 22d instant, I have the honor to request that you will obtain for me the opinion of the Nizamut Adawlut on the following point.

2. A case of dacoity was lately tried at the sessions for September last, in which the magistrate inserted in his calendar, as witnesses, the names of two prisoners confined in jail who had been previously convicted for the same crime and in the same case. In their confessions they took the name of the prisoner subsequently under trial, as having been concerned with them, and swore to his identity.

3. At the trial the law officer objected to admit such evidence, and I was of opinion that the testimony of a prisoner who had been convicted on the same charge and for the identical offence, could not avail to substantiate the guilt of another person as an accomplice in the same crime. I thought it tantamount to making a man a defendant and a witness in the same case. The magistrate however seemed to be of a different opinion, and as it may be questionable whether under the late Act, XIX. of 1837, such testimony is admissible or not, it would be satisfactory to me if the Nizamut Adawlut would favor me with their sentiments on the point for my future guidance.

The Presidency Court, on the 5th January, 1838, concurred in this construction.

December 8th, 1837.

From the Register of the Western Provinces to the Officiating Register of the Presidency Court of Sudder Dewanny Adawlut, dated 15th December, 1837.

No. 1118.
1831.
Reg. V. Sec. 20, 1832.
Reg. VII Sec. 3. 1837.
Act XXV.

I am directed by the Court to request that you will submit, for the consideration of the Calcutta Court, the accompanying copy of a letter from the judge of Benares, No. 267, under date the 8th instant, regarding the stampt paper to be used for pleadings in cases referred to the principal sudder ameens under the provisions of the 1st Section of Act XXV. of 1837.

2. The Court observe that under the rule contained in Section 20, Regulation V. of 1831, the pleadings in all cases up to 5000 rupees in amount or value, referred for trial and decision to the principal sudder ameens, are required to be written on stampt paper of one rupee value: and as Act XXV. of 1837, in enlarging the powers of those officers makes no provision on the point under reference, they are of opinion that as the law now stands, the same rule must be held to apply in respect to cases made over to the principal sudder ameens under Section 1 of that enactment.

3. With regard to Section 3, Regulation VII. of 1832, referred to by Mr. Mainwaring, the Court remark that the provisions of that Section are applicable only to the courts of the zillah and city judges, and they are of opinion that the enhanced rate of stamps thereby prescribed for the pleadings in those courts in certain cases could not be extended to the courts of the principal sudder ameens without a specific enactment.

From the Judge of the City of Benares to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 8th December, 1837.

By Section 3, Regulation VII. of 1832, pleadings in the courts of zillah or city judges under Regulation V. of 1831, are to be written on paper of the value of four rupees, except in original suits for property not exceeding in value or amount one thousand rupees, in which case they are to be written on stampt paper of only one rupee value.

2. By the operation of Act XXV. of 1837, the pleadings that have, under the rule above quoted, been written on paper of only one rupee value, involving a very considerable loss to Government, I beg to bring this to the notice of the superior Court, and to be informed if it is intended that all pleadings in cases before the principal sudder ameen, without reference to amount, are to be received, as cases of limited amount have heretofore been, on stampt paper of the value of one rupee.

The Presidency Court, on the 5th January, 1838, *concurred in this construction.*

December 15*th*, 1837.

From the Officiating Register of the Presidency Court to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 15*th December,* 1837.

No. 1118.
1810
Reg. XX.

I am directed by the Court to request that you will lay before the judges of the Court of Sudder Dewanny Adawlut for the Western Provinces, the accompanying copy of a letter from the commissioner of the 11th division, dated the 16th ultimo, No. 1039, with its enclosures.

2. The Court propose, with the concurrence of the Agra Court, to inform the commissioner, that in their opinion it was not competent to the magistrate under the provisions of Regulation XX. of 1810, to pull down houses in a military cantonment and eject their possessors merely on the requisition of the officer commanding the station.

The Western Court, on the 29*th December,* 1837, *concurred in this construction.*

December 15*th*, 1837.

From the Officiating Register of the Presidency Court to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 15*th December,* 1837.

No. 1120.
829.
Reg. X. Sec. 18.

I am directed by the Court to request that you will lay before the judges of the Court for the Western Provinces, the accompanying copy of a letter from the officiating judge of Sylhet, dated the 29th ultimo, No. 26.

2. The Court propose to inform the officiating judge, with the concurrence of the Agra Court, that in their opinion it is not optional with a judge to remit the fine which is declared by Section 18, Regulation X. of 1829, to attach to parties filing papers contrary to the provisions of that enactment.

From the Officiating Judge of Zillah Sylhet to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 29th November, 1837.

I have the honor to request the instructions of the Court whether I am competent to remit the penalty declared in Section 18, Regulation X. 1829, being assured that a stamp of inadequate value filed in a case, is filed under circumstances which leave no doubt that the filing party was ignorant of the inadequacy of its value.

From the Register of the Western Provinces to the Officiating Register of the Presidency Court of Sudder Dewanny Adawlut, dated 12th January, 1838.

I am directed to acknowledge the receipt of your letter, No. 3781, under date the 15th ultimo, with its enclosure, from the officiating judge of zillah Sylhet, and in reply to state that the Court concur with the Calcutta Court in the opinion that Section 18, Regulation X. of 1829, gives no discretion to the presiding officer, but that he is bound in all cases to levy the fine, therein prescribed, from any vakeel or authorized pleader or mookhtar, who may file any paper contrary to the provisions of that enactment.

From the Register of the Western Provinces to the Officiating Register of the Presidency Court of Sudder Dewanny Adawlut, dated 29th December, 1837.

No. 1121.
Circular Order, No. 216, Vol. II. 27th October, 1837.

I am directed to request that you will submit, for the consideration of the Calcutta Court, the accompanying copy of a letter from the judge of zillah Mynpoorie, No. 44, under date the 9th instant, relative to the circular of the 27th October last, which originated with the Calcutta Court, on the subject of security bonds.

2. Mr. Begbie, it will be observed, considers the construction laid down in the circular in question, opposed to that contained in the letter written to the judge of the Jungle Mehals, under date the 21st June, 1821, No. 341, of the printed construction book.

2. The Court direct me, however, to remark that the construction adverted to by Mr. Begbie, referred to the case of a person becoming security for the payment of a sum of money, and affixing his signature to the bond in recognition of his liability equally with the principal for the amount, the transaction being as it were a joint one, in which case it was held by the Court that it was not necessary to the admissibility of an action against the surety that he should have entered into a regular security bond on separate stampt paper of the same value as that of the original obligation; whereas the present construction has reference to a formal security bond executed on the same paper as the original instrument, which the Court have declared is not admissible under the stamp regulations as evidence against the surety: the two cases are, therefore, quite distinct, and the constructions are not, as supposed by Mr. Begbie, at variance with each other.

From the Judge of Zillah Mynpoorie to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 9th December, 1837.

I have the honor to acknowledge the receipt of your circular letter, No. 1410, under date 27th October last, on the subject of security bonds, and with reference to the instructions therein conveyed I beg to submit that the opinion now expressed seems to be opposed to that contained in the letter to the address of the acting judge of Jungle Mehals under date 1st June, 1821, (No. 341, book of constructions), wherein it is declared that it is not necessary for a surety to enter into a regular security bond on separate stampt paper of the same value as that of the original obligation, but that by affixing his signature to the original deed he may be sued jointly with the principal in the deed.

The Presidency Court, on the 2d February, 1838, *concurred in this construction.*

December 29th, 1837.

To the Register of the Nizamut Adawlut, Western Provinces, dated 29th December, 1837.

No. 1122.

A session judge is not competent to cancel a commitment merely on the ground of the evidence, as shewn by the calendar appearing insufficient for conviction.

I am directed to request that you will submit the accompanying copy of a letter, No. 47, dated the 5th instant, from the session judge of zillah Rungpore, for the consideration and opinion of the judges of the Western Court, in regard to the correctness or otherwise of that officer's proceeding.

2. The majority of this Court are of opinion that the judge was not competent to annul the commitment without following it up with ulterior measures, and that he ought to have tried and acquitted the prisoner if the charge was not established against him. On the other hand Mr. Hutchinson holds that in the total absence of all legal and satisfactory evidence, the annulment of the commitment was within the competency of the session judge, as without evidence a trial cannot be held.

From the Session Judge of Zillah Rungpore to the Register of the Presidency Court of Nizamut Adawlut, dated 5th December, 1837.

* Case No 2 of the Calendar for November, 1837.
Matoo Momin, servant of Burjsoonder Pukrasee, zemindar,
versus
Babva,.....Prisoner.
Charge—dacoity, attended with murder.

In conformity with the circular order of the Court of Nizamut Adawlut, No. 111, of the 20th July, 1832, I beg leave to report the following reason for cancelling a commitment* made by the officiating joint magistrate of Bugoora, on the 18th November, 1837.

2. In the 14th column of the English calendar the abstract of the grounds for the commitment of the prisoner is his "being inculpated as an accomplice by the already sentenced prisoners;* the circumstance of absconding from process, and the contradictory and improbable nature of the exculpatory evidence adduced," and by the proceedings, he does not appear to have been named by the prosecutor or witness; and there are no witnesses for the prosecution.

* In this case five prisoners were convicted of dacoity attended with murder, and sentenced by the Nizamut Adawlut on the 23d November, 1836, to imprisonment for life with labor and irons in the jail at Alipore.

1122.
29 December, 1837.

From the Register of the Western Provinces to the Officiating Register of the Presidency Court of Sudder Dewanny Adawlut, dated 19th January, 1838.

I am directed by the Court to acknowledge the receipt of your letter, No. 3823, under date the 29th ultimo, with its enclosure, from the session judge of zillah Rungpore, relative to the case of the prisoner named in the margin.*

* Babva, prisoner—charge dacoity, attended with murder.

2. In reply, I am directed to state that under the circumstances of the case, as reported by the session judge, the Court are clearly of opinion with the majority of the Calcutta Court, that it was not competent to that officer to cancel the commitment, but that he should have proceeded to put the prisoner regularly on his trial and to pass sentence of acquittal upon him, including the case, in the usual form, in his monthly sessions statements, and reporting therein his opinion in respect to the propriety or otherwise of the commitment, as required by the circular orders of the 8th May, 1829.

December 29th, 1837.

END OF VOLUME II.

Calcutta :—G. H. Huttmann, Bengal Military Orphan Press

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—	—	14	2	316.	
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—	—	19	—	333.	
—	—	23	—	198, 386,.....	808.
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—	—	—	2	110, 457.	
—	—	—	3	110	
—	52	—	—	335.	
—	—	5	3	142	
—	53	—	—	558	
—	—	2	—	.....	1002.
—	—	—	2	79, 270.	
—	—	—	6	236	
—	—	—	7	104, 353,.....	755
—	—	3	1	228,.....	750.
—	—	4	4	.....	750.
—	—	5	2	287	
—	—	6	2	484	
—	—	7	2	236.	
—	—	8	5	. .....	643.
—	—	9	—	47.	
—	—	—	1	161	
—	—	11	—	173	
1804	5	2	2	.....	625.
—	—	4	—	.....	619.
—	—	—	4	414.	
—	—	—	5	414.	
—	5	—	—	31.	
—	—	10	—	49.	
1805	2	—	—	432, 478.	
—	—	2	—	.....	942.
—	—	3	—	.....	942.
—	—	—	4	....	965.
—	—	4	—	565	
—	—	—	1	27, 316, 467.	

Year.	Reg.	Sec.	Cl.	NUMBER OF CONSTRUCTION. Vol. 1.	Vol. 2.
1805	2	6	——	316.	
——	——	10	——	551.	
——	——	13	——	191.	
——	——	14	2	36.	
——	——	——	3	19, 305.	
——	7	29	8	.....	651.
——	——	——	9	.....	651.
——	——	——	10	.....	651.
——	——	——	11	.....	651.
——	——	——	12	.....	651.
——	——	——	13	.....	651.
——	——	——	14	.....	651.
——	8	14	3	147.	
——	——	29	8	310, 398, 596, ...	637, 654, 663, 666, 682, 720.
——	——	——	9	310, 596, ...	637, 654, 663, 666, 682, 720.
——	——	——	10	310, 596, ...	637, 654, 663, 666, 682, 720.
——	——	——	11	310, 596, ...	637, 654, 663, 666, 682, 720.
——	——	——	12	310, 596, ...	637, 654, 663, 666, 682, 720.
——	——	——	13	142, 310, 596, ...	637, 654, 663, 666, 682, 720.
——	——	——	14	310, 596, ...	637, 654, 663, 666, 682, 720.
——	9	23	——	29.	
——	12	12	——	25.	
——	14	6	——	59, 122.	
——	17	2	——	142.	
1806	2	2	——	30, 512, ...	721, 854.
——	——	3	——	375, 406, ...	854.
——	——	4	——	.....	745, 888, 963.
——	——	5	——	190, 588, ...	665, 745, 916.
——	——	8	——	.....	1024.
——	——	10	——	44, 569, ...	752.
——	——	11	——	24, 60, 86, 95, 110, 177, 302, 308, 309, 319, 328, 372, ...	784, 1062, 1086, 1108.
——	——	12	——	21.	
——	10	10	——	.....	731.
——	11	——	——	314.	
——	——	3	——	.....	1049.
——	——	14	——	40.	
——	15	6	——	.....	983.
——	17	——	——	131, 370, ...	672.
——	——	7	——	277, ...	974.
——	——	8	——	80, 105, 131, 263, ...	630, 644, 898.
1807	1	4	2	308.	
——	——	7	——	280.	
——	2	——	——	195, 233, ...	656.
——	——	3	——	52.	
——	——	——	1	.....	638.
——	——	4	3	.....	1099.
——	——	——	4	.....	627.
——	9	——	——	603.	
——	——	3	——	404.	620 831.
——	——	4	——	512, ...	642, 1160.
——	——	5	——	.....	642.
——	——	6	——	295, 512, ...	642.
——	——	9	1	617.	
——	——	——	2	111.	
——	——	17	——	101.	
——	——	19	——	65, 79, 85, 94, 206, 237, 244, 259, 388, 423, 459, 610, ...	664, 774.

Year.	Reg.	Sec.	Cl.	NUMBER OF CONSTRUCTION. Vol. 1.	Vol. 2.
1807	9	20	—	189, 191, 516, 595, ...	686.
—	—	21	—	612, ...	722.
—	—	22	—	235, 357, ...	1104.
—	—	23	—	114, 120, 167, 283, 340, 382, 489, ...	625, 657, 730.
—	14	8	—	49.	
—	—	20	—	422.	
1808	9	3	—	117, 127.	
—	—	5	—	435.	
—	—	13	—	485, ...	889.
—	—	14	—	46, 118, ...	889.
—	10	—	—	82, 279.	
—	—	6	—	98, ...	746.
—	—	7	—	141, ...	746.
—	13	—	—	72.	
—	—	2	—	69.	
—	—	3	—	227.	
—	—	11	—	198, 331.	
—	—	—	2	90, 536, ...	1077.
—	—	—	3	.....	646.
—	—	12	—	106, 272, 284.	
—	—	13	—	.....	1014.
1809	5	—	—	.....	703, 926.
—	7	7	—	188.	
—	8	—	—	62.	
—	—	3	—	306.	
—	—	5	—	49, 88, 91, 306.	
—	—	—	2	578, ...	618.
—	—	—	5	192, 244.	
—	—	7	—	51, 344.	
—	—	—	2	.....	618.
—	—	9	—	49, ...	940.
—	—	11	—	50.	
—	9	9	—	168.	
1810	6	3	—	.....	889.
—	—	4	—	63, ...	889.
—	—	5	—	63.	
—	8	—	—	82, 279.	
—	9	31	—	84.	
—	—	38	—	205, 476.	
—	—	39	—	76, 205, ...	973.
—	13	2	3	83, 90.	
—	—	—	4	70, 497, ...	779.
—	—	4	2	280.	
—	—	—	3	262.	
—	—	—	4	66, 74.	
—	—	6	3	538.	
—	—	9	3	68.	
—	—	11	—	164, ...	977.
—	—	—	1	208.	
—	14	3	—	350.	
—	—	4	—	350.	
—	—	5	—	152.	
—	16	9	—	.....	858.
—	—	11	—	210, 232.	
—	—	16	—	229.	
—	—	18	—	229.	
—	20	—	—	.....	1119.

Year.	Reg.	Sec.	Cl.	NUMBER OF CONSTRUCTION. Vol 1.	Vol. 2.
1810	20	15	—	392.	
—	—	16	—	392.	
—	—	17	—	392	
—	—	18	—	.....	760, 1044.
—	—	22	—	498	
1811	1	—	—	287.	
—	—	2	2	144.	
—	—	3	1	299.	
—	—	—	2	299.	
—	—	—	3	144, 218, 299.	
—	—	5	—	484	
—	—	7	—	133, 217.	
—	—	8	—	131.	
—	—	9	1	89.	
—	—	—	2	89	
—	7	2	3	149	
—	—	5	—	94, 233, 459, 528, 530, 610.	
—	10	—	—	99.	
1812	1	22	—	317.	
—	3	2	—	221	
—	—	4	—	.....	889.
—	—	6	—	151, 193.	
—	4	—	—	377.	
—	5	—	—	574, 581, 599.	
—	—	9	—	234, 255, 257.	
—	—	10	—	234, 255, 257.	
—	—	14	—	.....	962.
—	—	15	—	234, 255, 348, 421, 503.	
—	—	17	—	327, 467	
—	—	20	—	467.	
—	—	21	—	108, 112, 116, 126, 165, 166, 203.	
—	—	26	—	115, 142, 449,.....	717.
—	—	27	—	449.	
—	16	—	—	.....	932.
—	20	—	—	.....	905.
—	—	2	—	119.	
—	—	7	—	.....	732, 812.
—	—	10	—	.....	782.
1813	2	—	—	543.	
—	—	2	—	.....	903.
—	6	—	—	286, 368, 472, 475, ...	875.
—	—	2	—	253.	
—	—	3	—	571.	
—	—	—	2	225.	
—	—	5	—	140, 281.	
—	—	—	1	167, 191, 311, 444.	
—	—	—	3	213, 414.	
—	8	—	—	.....	703
—	10	—	—	32.	
—	—	22	—	252.	
—	13	7	—	215	
—	—	16	—	215	
1814	1	—	—	156, 164, 169.	
—	—	2	—	187.	
—	—	9	—	292, 312, 324, 325, 392, 412.	
—	—	11	—	154, 185, 187, 207, 274, 275, 312, 324, 325, 341, 409, 412, 431.	

Year.	Reg.	Sec.	Cl.	NUMBER OF CONSTRUCTION. Vol. 1.	Vol. 2.
1814	1	12	—	321.	
—	—	13	—	163, 180, 187.	
—	—	14	—	180, 187, 274.	
—	—	—	1	462.	
—	—	—	4	181.	
—	—	15	—	145, 146, 179, 183, 187, 223, 242, 243, 289.	
—	—	16	—	145, 182, 183, 187, 223, 242, 243.	
—	—	17	—	170, 183, 187, 202, 223, 242, 243.	
—	—	18	—	183, 188, 243, 247, 261.	
—	—	19	—	171, 178, 183, 184, 207, 243, 412.	
—	2	—	—	.....	1116.
—	—	3	1	410.	
—	8	—	—	.....	889.
—	11	—	—	287.	
—	—	2	2	299.	
—	—	—	3	299.	
—	—	—	4	218, 299.	
—	—	—	5	299.	
—	12	—	—	.....	788, 827.
—	15	—	—	307.	
—	—	2	1	360.	
—	—	—	3	.....	1011.
—	23	—	—	250, 322, 481.	
—	—	8	2	514.	
—	—	9	—	.....	667.
—	—	10	—	64.	
—	—	—	2	.....	781, 1069.
—	—	13	—	196, 332.	
—	—	—	1	219, 452, 480.	
—	—	—	2	219.	
—	—	—	3	219.	
—	—	15	3	.....	846.
—	—	—	4	.....	990.
—	—	19	—	400.	
—	—	21	2	.....	775.
—	—	22	3	.....	775.
—	—	23	—	.....	701, 772.
—	—	25	4	276.	
—	—	27	—	.....	859.
—	—	—	1	.....	870.
—	—	—	2	.....	870, 872.
—	—	29	—	400.	
—	—	31	—	.....	701.
—	—	40	—	.....	966.
—	—	42	—	.....	701, 966.
—	—	45	—	289.	
—	—	—	4	284.	
—	—	—	6	284.	979.
—	—	—	7	302, 308, 328, 569,	964.
—	—	46	—	477.	
—	—	—	5	284, 472.	
—	—	47	—	.....	853.
—	—	49	2	212, 260.	
—	—	52	—	509, 587,	714, 824, 861.
—	—	54	—	.....	714.
—	—	59	—	.....	861.

Year.	Reg	Sec.	Cl.	NUMBER OF CONSTRUCTION. Vol. 1.	Vol. 2.
1814	23	63	—	514.	
—	—	64	—	269.	
—	—	68	—	219.	
—	—	72	—	.....	802.
—	—	73	—	239, 477.	
—	—	74	—	.....	1020.
—	—	75	3	223.	
—	—	76	—	.....	761.
—	—	—	1	.....	815.
—	—	—	2	.....	815.
—	—	—	3	.....	815.
—	—	—	4	.....	815.
—	—	—	6	.....	815.
—	24	—	—	322.	
—	—	6	2	273.	
—	—	8	—	251.	
—	—	—	2	242.	
—	—	—	7	215.	
—	—	9	—	251, 268.	
—	—	—	4	223	
—	—	—	6	223, 356.	
—	—	10	—	251.	
—	—	11	—	251.	
—	—	12	—	251, 268, 285.	
—	—	—	3	194	
—	25	3	—	227.	
—	—	5	—	227, 245.	
—	—	8	—	591.	
—	—	9	—	205, 262, 363.	
—	—	11	—	290.	
—	—	12	—	205, 235, 290, 295, 387.	
—	—	—	1	137.	
—	—	—	2	383.	
—	—	13	—	205.	
—	—	14	—	205.	
—	26	2	—	289.	
—	—	—	1	246, 536.	
—	—	—	2	499.	
—	—	—	3	248.	
—	—	—	4	536.	
—	—	—	6	245, 354, ...	641.
—	—	3	—	551, 613, ...	872.
—	—	—	4	.....	870.
—	—	—	8	470.	
—	—	—	9	470.	723, 805.
—	—	—	10	.....	723.
—	—	—	11	297, 300.	
—	—	4	—	201, ...	1057, 1075.
—	—	—	2	216, 551	810
—	—	—	3	.....	732.
—	—	—	4	.....	810.
—	—	5	3	.....	870.
—	—	—	4	429.	
—	—	6	2	.....	687.
—	—	7	—	.....	687, 1046.
—	—	8	—	241, ...	863.
—	—	—	5	556.	

Year.	Reg.	Sec.	Cl.	NUMBER OF CONSTRUCTION. Vol. 1.	Vol. 2.
1814	26	8	7	413.	
—	—	—	8	413.	
—	—	—	9	413.	
—	—	—	10	418, 437.	
—	—	12	1	406.	
—	—	—	3	376,	870.
—	—	13	—		659.
—	—	14	4		668.
—	—	—	5		668.
—	—	—	6		668.
—	—	—	7		668.
—	—	—	8		1084.
—	—	15	—	239, 293.	
—	—	—	5	211.	
—	—	—	8	238.	
—	—	16	3	207.	
—	—	—	4	408.	
—	—	20	—	202.	
—	—	—	1	249.	
—	—	—	3	537.	
—	—	21	—	224.	
—	—	22	—	289.	
—	—	24	—	289.	
—	—	25	1	212.	
—	27	—	—	92.	
—	—	16	—	593, 602.	
—	—	17	—	371.	
—	—	20	—		802.
—	—	21	—	417.	
—	—	23	—	197, 199.	
—	—	25	—	500.	
—	—	29	—		776.
—	—	30	—	500.	
—	—	31	—	209, 214, 418,	1052.
—	—	32	—	297, 300.	
—	—	34	—	197,	852.
—	—	37	3	420.	
—	28	—	—	186.	
—	—	4	—		919, 1009.
—	—	5	—		821, 904.
—	—	6	1		777.
—	—	7	—	261.	
—	—	8	—	261,	1063.
—	—	10	2		740.
—	—	11	—	9,	621.
—	—	—	1		777.
—	—	—	3		922.
—	—	12	—		1009.
—	—	—	3		1025, 1097.
—	—	16	1		949.
—	—	19	—		657.
1816	4	2	—	247.	
—	—	4	—	507.	
—	11	—	—		864.
—	14	9	—		712.
—	15	10	2	264.	

Year.	Reg.	Sec.	Cl.	NUMBER OF CONSTRUCTION. Vol. 1.	Vol. 2.
1816	17	7	—	344.	
—	—	—	2	258.	
—	—	—	4	.....	907.
—	—	—	5	573,.....	907.
—	—	—	6	.....	907.
—	—	—	7	.....	907.
—	—	15	—	511.	
—	18	2	—	.....	746.
—	22	—	—	304, 411, 608.	
—	—	19	—	.....	782.
1817	3	—	—	.....	767.
—	6	2	—	343.	
—	17	5	—	.....	634, 1045.
—	—	6	3	403.	
—	—	—	4	.....	670, 865.
—	—	8	4	865, 558,.....	755.
—	—	—	5	287.	
—	—	9	—	506.	
—	—	10	—	.....	1061.
—	—	—	1	464.	
—	—	—	3	559.	
—	—	11	—	361, 362.	
—	—	13	1	.....	1086.
—	—	14	—	611	
—	—	—	2	285, 504, 518,.....	838.
—	18	—	—	384.	
—	—	6	—	.....	649.
—	—	7	—	.....	691.
—	—	—	3	.....	824.
—	19	2	—	356	
—	—	7	—	613.	
—	—	8	—	613, ...	675.
—	—	9	—	297.	
—	—	—	3	338.	
—	—	16	2	285	
—	20	10	4	.....	728.
—	—	11	3	.....	782.
—	—	13	—	189.	
—	—	16	2	585.	
—	—	—	17	381, 511,.....	727.
—	—	19	—	.....	733.
—	—	20	—	548.	
—	—	21	—	608.	
—	—	23	—	.....	679.
—	—	25	1	.....	831.
—	—	26	—	.....	619.
—	25	—	—	.....	751.
1818	4	12	—	.....	857.
—	5	5	2	602.	
—	6	3	—	295.	
—	—	—	4	.....	1012.
—	8	—	—	347, 390, 458, 548.	
—	—	2	2	.....	823.
—	—	3	—	460.	
—	—	7	—	.....	734.
—	—	9	2	517.	
—	—	10	—	.....	771.

Year.	Reg.	Sec.	Cl.	NUMBER OF CONSTRUCTION. Vol. 1.	Vol. 2.
1818	10	5	1	.....	892.
——	12	——	——	307, ...	684.
——	——	2	——	298, 303.	
——	——	——	2	374, 379.	
——	——	——	3	299, 301.	
——	——	——	4	299.	
——	——	——	5	299.	
——	——	3	——	303, 391, 488.	
——	——	——	4	358, 419, 468, ...	994.
——	——	4	——	303, 466.	
——	——	5	——	501, 545.	
——	——	7	——	318.	
1819	2	——	——	508, 534, 603.	
——	——	13	——	.....	1079.
——	——	22	——	.....	768.
——	——	27	——	.....	768.
——	——	30	——	320, 499, 527, 576, 584, ...	669, 981, 1067.
——	——	——	1	427, 450, 455, 576, 589.	
——	——	——	7	338, 450, ...	987, 1076.
——	——	——	8	.....	1076.
——	6	——	——	.....	713, 1111.
——	7	3	——	.....	992.
——	——	5	——	384, ...	924, 1085.
——	——	6	——	582, ...	770, 1053.
——	——	——	2	560.	
——	——	——	3	340, 345, 560, ...	913.
——	——	——	4	345.	
——	8	——	——	349.	
——	——	8	——	313, 329, 461, 523, 597.	
——	——	9	——	326, 580, 597, 614, ...	695.
——	——	10	——	440.	
——	——	16	——	.....	695.
——	——	17	2	491.	
——	——	——	7	.....	795.
——	——	18	——	380, 456, 475, 482, 531.	
——	——	——	4	496, 502, ...	695.
——	——	19	——	380.	
——	9	3	1	336, 354.	
——	10	——	——	476.	
——	——	36	——	.....	653.
——	——	41	——	.....	653.
——	——	67	——	471, 496.	
——	——	104	——	483.	
——	——	113	——	483.	
——	——	114	——	.....	1113.
1820	3	——	——	314.	
——	4	——	——	401.	
1821	1	——	——	.....	984.
——	——	3	——	542, 562.	
——	2	4	——	400, 480.	
——	——	5	——	415.	
——	2	5	3	463.	
——	——	7	——	451.	
——	——	8	——	586.	
——	——	12	——	355.	
——	3	——	——	603.	
——	——	2	——	516, 529, 548.	

Year.	Reg.	Sec.	Cl.	NUMBER OF CONSTRUCTION. Vol. 1.	Vol. 2.
1821	3	2	3	.....	883.
——	——	——	5	.....	769.
——	——	3	——	415, 516, 595, ...	627, 741.
——	——	4	——	415, 451, ...	741.
——	——	5	——	437, 521.	
——	——	——	1	.....	697, 730.
——	4	8	——	603.	
1822	1	3	——	423.	
——	——	4	——	423.	
——	5	——	——	435.	
——	6	3	2	.....	943.
——	7	23	3	.....	677.
——	——	24	3	.....	1018.
——	8	——	——	474.	
——	——	3	1	.....	694.
——	——	6	——	.....	1107.
——	9	——	——	.....	926.
——	——	2	——	533.	
——	11	28	2	.....	996.
——	——	——	4	469.	
——	——	38	——	.....	1075.
1823	1	——	——	562.	
——	——	2	2	562.	
——	4	6	——	.....	685, 691.
——	6	——	——	565, ...	652, 661, 1092.
——	——	3	9	515.	
——	——	5	——	385.	
——	——	7	——	.....	873.
1824	1	12	——	388.	
——	4	——	——	366, ...	743.
——	——	3	——	611.	
——	——	4	——	611.	
——	6	5	——	419, 488.	
——	7	18	4	494.	
——	10	——	——	405, ...	1026, 1041.
——	——	3	1	535.	
——	11	——	——	.....	652.
——	——	2	——	.....	678.
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—	—	4	2		662, 674.
—	—	7	—		711.
—	—	8	—		742.
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—	—	8	—		736, 907.
1832	2	2	2		708
—	3	—	—		955.
—	—	2	2		887.
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